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THE
VICTORIAN CHANCELLORS

VOL. II

LORD ST. LEON

THE VICTORIAN CHANCELLORS

BY

J. B. ATLAY

OF LINCOLN'S INN, BARRISTER-AT-LAW

AUTHOR OF 'LORD COCHRANE'S TRIAL BEFORE LORD ELLENBOROUGH'
'SIR HENRY WENTWORTH ACLAND, BART.: A MEMOIR'
ETC.

IN TWO VOLUMES

VOL. II.

LORD ST. LEONARDS	LORD CAIRNS
LORD CRANWORTH	LORD HATHERLEY
LORD CHELMSFORD	LORD SELBORNE
LORD CAMPBELL	LORD HALSBURY
LORD WESTBURY	LORD HERSCHELL

WITH PORTRAITS

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PREFACE

TO

THE SECOND VOLUME

THE material available for the memoirs contained in this volume varies greatly both in quality and quantity. No biographer has been found as yet for Lord St. Leonards or Lord Cranworth, and the sources of information, with regard to the latter especially, are scanty in the extreme. Thanks, however, to the kindness of Dr. Tristram, K.C., who has long been associated with the Sugden family, I have had access to some correspondence between Lord St. Leonards and the great lawyers and statesmen who were his contemporaries.

In the case of Lord Chelmsford I have been more fortunate. He left behind him an autobiography which covered in outline the whole of his private and professional career, and gives at considerable length the details of the more celebrated cases in which he was engaged when at the Bar. From this manuscript, which has not hitherto, I believe, been read outside the family circle, the present Lord Chelmsford has most generously allowed me to draw, a permission of which I have availed myself to the full. I have also to thank him for leave to reproduce the portrait of his grandfather which appears in these pages.

The 'Life of Lord Campbell,' consisting of a selection from his autobiography, diary, and letters, edited by his daughter, the Hon. Mrs. Hardcastle,[1] is a perfect mine of information both as to the Chancellor himself and on the legal and political history of his times, though some caution has to be exercised in the acceptance of its details. It forms not only the basis of my sketch of Lord Campbell, but the foundation of much else that is contained in this volume and its predecessor.

The 'Life of Lord Westbury,' by Mr. T. A. Nash,[2] is also a biography of very high merit, alike in form and substance. It was undertaken, we are told in the preface, at the request of members of the Chancellor's family, who placed at the writer's disposal the whole of their father's papers. The constant references to it in the text are an inadequate measure of the extent of my indebtedness, and it is with real regret that I am compelled to take a less favourable view than that presented by Mr. Nash of one who in point of sheer intellect is excelled by none of the Victorian Chancellors.

With Lord Cairns the stream of fact dwindles again. A little book of one hundred pages, written by desire of his widow and published anonymously,[3] is devoted almost entirely to the religious and philanthropic side of his character. I have gleaned a few details from it, but otherwise I have been thrown back on the public annals of the time and on a brief but excellent appreciation from the pen of the Right Hon. James Bryce.[4]

The 'Memoir of Lord Hatherley,' by the late Dean of Winchester, the Rev. W. R. W. Stephens, D.D.,[5] is on a much larger scale, but is open to the same

[1] 2 vols. (Murray, 1881.)

[2] 2 vols. (Richard Bentley, 1888.)

[3] *Brief Memories of Hugh McCalmont, First Earl Cairns.* (James Nisbet, 1885.)

[4] *Biographical Studies*, 184. [5] 2 vols. (Richard Bentley, 1883.)

criticism as the sketch of Lord Cairns to which I have just alluded; it contains, however, a substantial fragment of autobiography written by Sir William Page Wood in 1863, which is of great value.

The four volumes of Lord Selborne's 'Memorials'[1] suffer, on the other hand, from their excessive length; but they contain a vast mass of most miscellaneous information, and are distinguished alike by generosity of tone and felicity of portraiture. They will always remain an indispensable authority for the period they cover.

The impossibility, in the present year of grace, of treating Lord Halsbury and Lord Herschell on the same scale as their predecessors must be patent. It seemed equally impossible, however, to bring these volumes to a close without some sketch, however slight or imperfect, of the two Chancellors who between them held the Seals for the last sixteen years of Queen Victoria's reign. In the preparation of the brief notice of Lord Herschell, I have enjoyed the advantage of advice and assistance from some of his intimate friends. To them my sincere thanks are due, as well as to the many who by word of mouth or by written communications have lessened my labours, and have enabled me to give some shadow of permanence to the fleeting stock of legal anecdote and tradition.

I have also to acknowledge the kindness of the President and Fellows of Trinity College, Oxford, in permitting me to reproduce the portrait of Lord Selborne which is in their possession.

J. B. A.

LINCOLN'S INN,
April 1908.

[1] *Vide infra*, 377 *n.* 2.

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THE VICTORIAN CHANCELLORS

CHAPTER I

LIFE OF LORD ST. LEONARDS DOWN TO HIS FIRST CHANCELLORSHIP OF IRELAND

1781–1834

THE Sugden family appear to have hailed from Skipton-in-Craven, where, according to the old Justice of the Peace in 'Rob Roy,' 'there's never a haven, but many a day foul weather'; Edward Burtenshaw, however, the subject of this memoir, was born at his father's house in Duke Street, Westminster, on February 12, 1781. Like the parent of the first Lord Tenterden, the elder Sugden was a hairdresser, but the London establishment was on a larger and more prosperous scale than the modest shop in Mercery Lane where old Mr. Abbott used to dress the wigs of the Canons of Canterbury. Edward was the second son, and concerning his early years and education little or nothing has been preserved; nor does it appear whether, like the future Lord Chief Justice, he was ever actually initiated into the mysteries of a barber's calling. The only authority is a reported saying of his father to Mr. Selwyn, K.C.:

I tried my son, Ned, in my own profession, but unfortunately he has no genius for it, so I have been obliged to put him as a pupil with Mr. Duval the conveyancer.[1]

[1] *Life of Lord Campbell*, ii. 305.

Whether this be true or merely *ben trovato*, 'Ned' never showed any disposition to be ashamed of his origin. When, on the Cambridge hustings, after he had attained the highest honours of his profession, he was twitted amid cries of 'soap' and 'lather' with being the son of a barber, he answered: 'Yes, but if you had been the son of a barber, you would have been a barber yourself for the rest of your days.' A similar retort has been placed in the mouths of a succession of eminent men from Themistocles downward.

The more generally accepted version of Edward Sugden's beginnings in the law represents him as being taken from school at an early age and employed as a clerk to a firm of London solicitors, among whose counsel was the aforesaid Mr. Duval. It was Sugden's duty to carry the papers and instructions to his chambers, and Duval, having occasion one day to speak to the young clerk on some point arising out of the matter in hand, was taken aback by his acquaintance with the law of the case. He offered to take him as a pupil without the customary fee, and Sugden began his studies under the eye of one who stood second only to Charles Butler in nice appreciation of language and in the clear understanding of the objects of legal instruments.[1]

From Mr. Duval's chambers he migrated in 1802 to those of another eminent chamber counsel, Mr. William Groome, and as a necessary step to taking out a conveyancer's certificate he was admitted a student of Lincoln's Inn on September 16. In the same year he published a slim octavo volume bearing as its title, 'A Brief Conversation with a Gentleman of Landed Property about to buy or sell Lands.' Though barely one and twenty, and probably the youngest legal author since Grotius, Sugden possessed even then the same power of accurate condensation, of putting technicalities into popular

[1] *Davidson's Precedents and Forms in Conveyancing* (1874 edition), i. 8, and *Dict. Nat. Biog.* xvi. 272.

language, and of making plain the windings of an intricate system which endured to the end of his long life.

I resolved, he once told Sir Thomas Fowell Buxton, when beginning to read law, to make everything I acquired perfectly my own, and never to go on to a second thing till I had entirely accomplished the first. Many of my companions read as much in a day as I read in a week, but at the end of twelve months my knowledge was as fresh as the day it was acquired, while theirs had slipped out of their memories.

His name first appears in the Law List of 1804, and he did not enter upon independent practice until 1805. In the interval, such time as he could spare from Mr. Groome's drafts was devoted to the preparation of a 'Practical Treatise on the Law of Vendors and Purchasers of Estates.'

Determined at my outset in life, he says, half a century afterwards,[1] to write a book, I was delighted when I hit upon the subject now before the reader. The title promised well, and many portions of the law had not previously been embodied in any treatise. Modern law treatises were, indeed, few at that period. When this work was announced for publication nearly the universal opinion was that it would be a failure, as the subjects to be considered were too multifarious for one treatise. Nothing dismayed, I laboured on diligently; and, with the aid of Lincoln's Inn library, in which a considerable portion of the book was written—for my own shelves were but scantily furnished—I at length finished the work in its original shape.

The expenses of publication were certain, the success problematical, and Sugden was half inclined, so he tells us, to commit the manuscript to the flames, when at last a bookseller was found to undertake the sale at 'half profits,' and as soon as it was printed, another bookseller bought the author's interest in the edition. The amount was small, but in after years, when he had held the Great Seals of England and Ireland, Lord St. Leonards would

[1] Preface to the 13th edition.

declare that he had never since received any sum with anything approaching the same satisfaction.[1]

The 'Law of Vendors and Purchasers' was one of those rare books which not only attract the attention of the student and the practitioner, but bring business in their train. Young Sugden awoke to find himself famous, and his table loaded with abstracts of title and cases for opinion. Following the example which had recently been set by some of the elder conveyancers, he resolved to go to the Bar and place himself in the position to follow his practice into Court and argue in support of the instruments which he had drawn or settled in chambers.

On November 27, 1807, he was called at Lincoln's Inn, having completed his terms and eaten his quantum of mutton and tarts. At one of these modest repasts he had for messmate a certain Mr. John Campbell from Cupar, who relates that his future successor as Chancellor of Ireland began the conversation by asking him what he thought of the *scintilla juris*. We can well believe that this famous abstraction 'invented by perverse astuteness to escape a difficulty which itself only had created,'[2] was occupying Sugden's mind just then, even during his moments of recreation, for in 1808 he published his 'Practical Treatise on Powers,' a work of profound learning and great ingenuity which held the field in various new editions during the author's lifetime, and was only superseded in the seventies by the labours of Lord Justice Farwell. He always preferred the 'Powers' as the most logical of his works, and Sir Robert Peel once told him that, having heard his treatise described as a sort of legal Euclid, he had selected the

[1] For one of the later editions he was paid the sum of four thousand guineas, the largest price, it is believed, ever given for a law book.

[2] 'When a man had indicated the future enjoyment of his property in certain specified contingencies the antique conveyancer, putting on a pair of huge magnifying glasses, fancied he detected in that man who himself imagined that he had exhausted himself of all connection with the property a lambent spark of interest—a mere metaphysical entity—a momentary seisin adequate to "feed the use."' (*Blackwood*, lxxxi. 248, Feb. 1857.)

section bearing the title of 'Scintilla Juris' as the 'pons asinorum,' and had set to work to master it.

From the day of his call Sugden sprang at a bound into close rivalry with the most eminent and venerable conveyancing counsel. His chambers were beset by solicitors, and a host of pupils, each bringing an honorarium of a hundred guineas, spent their days over his 'precedent book.' He has been described to me sitting in conference with his legs crossed, turning the pages of a strange abstract of title with extraordinary rapidity, jotting down a hieroglyphic pencil note at intervals, and occasionally letting fly some irascible comment.

His first appearance in Court, a few months after his call, was before the Master of the Rolls, Sir William Grant, in the case of Brown *v.* Like,[1] when his client, who had bought the life interest in the dividends on a small sum in the funds, was refused payment on the ground that the transaction had not been enrolled under the Annuities Act.[2] Sir Samuel Romilly, who was briefed on the same side, left him to open the case, and he had not proceeded far in his argument when the opposing counsel, Mr. Richards,[3] one of the leaders of the Court, turned round and told him they would abandon that point. His further contention that the transaction was an out-and-out sale, and not the creation of an annuity, proved equally successful, and his reputation was made.

For some years to come he combined his huge chamber practice with appearances in Court, which became more and more frequent whenever the construction of wills and deeds was in dispute, but at last the period was reached when the double strain became intolerable.[4]

[1] 14 Vesey Junior, 302.

[2] A few years later Sugden himself drafted the Act (53 Geo. III. 141) which abolished the form of enrolment.

[3] Appointed Lord Chief Baron in 1817.

[4] Yet during these years he not only found time to produce in rapid succession new editions of his two classical works, but in 1811 he published an edition of Gilbert on *Uses and Trusts*, enriched with an introduction and notes far superior in value to the text which they elucidated.

He resolved to abandon conveyancing and equity drafting and confine himself exclusively to Court work—to-day he would have applied for silk, but then, and long after, that distinction was very charily bestowed. It was a hazardous experiment, entailing the immediate abandonment of the greater part of his professional income, and he had now given hostages to fortune, for in December 1808 he had married Miss Winifred Knapp, a union which was destined to be blessed with no fewer than ten children.

In spite of his successful advocacy both in Chancery and in the argument of 'Special Cases' in the Common Pleas, his friends had persuaded themselves that he was forsaking his proper sphere. A writer in 'Blackwood,'[1] who vouches as his informant 'an eminent Queen's Counsel then living,' tells us that

> a distinguished member of the profession besought him, with the utmost and almost tearful urgency, not to take a step which he believed, with many others, would prove fatal to his prosperity. We have heard that the late Vice-Chancellor of England, then Mr. Shadwell, made no secret of his opinion that Mr. Sugden's appearance at the Bar would be a complete failure.

At the outset the prognostications of the croakers were justified. Incensed at what they regarded as an act of desertion, the leading London firms of solicitors, with one accord, ignored their former favourite, and for some weeks he was left to suffer the tortures of the briefless. But Sugden was not the man to be snuffed out by a boycott, however resolute. He bided his time in calm reliance on his own powers, and at last a small brief was put in his hands by one of the lesser lights of the fraternity. The hostile combination was broken down, the offended clients returned to their allegiance, and Sugden had no further anxiety.[2]

[1] lxxxi, 251, Feb. 1857.

[2] I have given the story from the article in *Blackwood*, *loc. cit.*, which professes to be based on authority, but considering the position which Sugden had already acquired as an advocate, I feel considerable doubt as to its accuracy.

Henceforward there was no check. He was almost as well acquainted with the practical details of equity as with the minutiæ of real property law; nothing could disconcert him, he was equally acute in detecting and creating flaws in his adversary's case. His quickness of perception, his imperturbable coolness, and his gift of presenting the most complicated facts in lucid order and in the vigorous language of which he possessed an unlimited flow, made him especially acceptable to Lord Eldon, whose last tenure of the Great Seal, 1807–1827, coincided with Sugden's career as a private member of the Bar. As early as 1817 he was in enjoyment of a commanding practice, and the Chancellor paid him the unprecedented compliment of asking him into his private room to consult him over a knotty question which had arisen over a case in which he was not retained. A more substantial favour was the gift of a silk gown in Hilary term, 1822, and from that day onward Sugden had few rivals in the leadership of the Chancery Bar.

Secure in his grasp of legal principles and of case law, he did not always regard the study of his brief as essential to his argument, a foible which was sometimes attended with untoward consequences. It happened one day in the Vice-Chancellor's Court, that after Mr. Horne and Mr. Pemberton had been duly heard, Mr. Sugden followed them, contending strongly that the law as laid down by them was perfectly clear. 'Then Mr. Sugden is with you, Mr. Horne?' said the Vice-Chancellor, to which Mr. Horne, with some embarrassment, replied, that the argument of Mr. Sugden was certainly, to his surprise, on their side, but he had understood that his learned friend had been briefed on the other. After a hurried consultation with his junior, Sugden had to admit that such was the fact, and to content himself with begging that the Vice-Chancellor would decide the case without any reference to what he had said inadvertently.[1]

[1] *Law Magazine*, i. 686; for Mr. (afterwards Sir William) Horne *see ante*, vol. i. 390 and *infra*, 155.

To follow him through these laborious and lucrative years, when his annual income seldom fell below 15,000*l.*, would necessitate a catalogue of leading cases which may be studied more profitably in the pages of 'Vesey Junior,' and 'Simon.' To scale those heights in the legal profession which were within the scope of his legitimate ambition, a seat in Parliament was indispensable. The end of the great Whig exclusion was not yet in sight, and the eyes of aspiring lawyers were drawn magnetically to the ministerial benches. Though neither in general politics nor in regard to legal reform was Sugden's mind cast in the same unyielding mould as that of his friend and patron on the Woolsack, he was, by conviction and temperament, as firm a Tory as Lord Cottenham was a Whig. But the fortune which had attended him from the very first at the Bar was less kind in his wooing of the constituencies. In 1818 he was put forward for Sussex, in which county he had bought the estate of Slaugham in Tilgate Forest. One of the sitting members, Sir Godfrey Webster, had announced his intention not to seek re-election, and it seemed as though Sugden and his colleague, Mr. Walter Burrell, would have a walk over. At the last moment Sir Godfrey was nominated, and the first day's polling left Sugden in so hopeless a minority that he withdrew from the contest.

In 1826 he stood for Shoreham, a constituency in which the influence of the Roman Catholic Duke of Norfolk was paramount, and he appealed to his old friend, Charles Butler, who was of that faith, to approach his Grace on his behalf. The learned conveyancer complied in a letter which contained, without any direct authorisation from the candidate, the statement that he was in favour of Catholic Emancipation. But the Duke's support was already pledged to his kinsman, Mr. Henry Howard, and Sugden, in his election address, announced his intention of opposing the admission of Roman Catholics to Parliament. The circulation of Mr. Butler's letter among the freeholders caused the not unnatural

impression that they were being trifled with, and Sugden found himself again at the bottom of the poll. But in February 1828 he was elected, after a severe and expensive contest, for the borough of Weymouth and Melcombe Regis, which then shared with the City of London the distinction of being represented in Parliament by four members.[1] The following lines unite the somewhat intractable names of the new Member and his seat in ingenious rhyme:

My dear Ure, when the carriage was driving away
Lady Dysart most kindly empower'd me to say
That your colleague whose name is not easily lugged in
To a couplet, I mean Edward Burtenshaw Sugden,
Whether Member for Weymouth, or Member for Melcombe,
Will on Friday at Ham be most heartily welcome
At the choicest repast a good French cook can dish up,
He will meet an Earl, Principal, Baronet, Bishop,
Amongst whom tho' political union is rare
They'll *nem. con.* support one Bill, I mean that of *fare.*

But though he had entered the House of Commons with a definite object in view, and prepared to take a full share in its business, he did not allow his professional work to suffer by it. He had distanced all competitors at Lincoln's Inn, and when Eldon was succeeded by a Chancellor who had at first to grope his way along the unaccustomed paths of equity, Sugden obtained an

[1] *See ante*, vol. i. 86. The contest lasted twelve days, during six of which Sugden was in a minority (Hansard, 2nd ser. xviii. 1416), and Campbell, who had acted as counsel to one of the candidates a couple of years earlier, with a fee of three hundred guineas, throws a curious light on a system which was about to pass away. 'The election was held in a small room, to reach which we had to mount a ladder and enter by the window on account of the crowd on the staircase. The chief right of voting was the title to any portion of certain ancient rents within the borough, and several voted as entitled to an undivided twentieth part of a sixpence. The conveyances to these qualifications were to be strictly investigated, long arguments were addressed to the returning officer, and the decision of a single vote, like the trial of an ejectment at the Assizes, sometimes lasted a whole day' (*Life of Lord Campbell*, i. 435).

ascendancy over the Court which was the source of no small resentment among his brother barristers.[1] He found it necessary to refuse all briefs before the Master of the Rolls and the Vice-Chancellor, however tempting the 'special' fee, and even so his labours were almost beyond human endurance.

His harassed and careworn countenance as he began his Court work in the morning told of long sittings in the Commons and of nights in which his head had touched the pillow for an hour or two at most. Consultations began at a quarter to nine, from ten to four he was on his legs, and, as often as not, he would remain either in the precincts of the Palace of Westminster or reading briefs in a room at Bellamy's Coffee House until far on into the next day.[2]

Abstemious habits and a superb constitution carried him through, seconded by his rapidity of apprehension and an extraordinary power of despatching business. It is related that once, after an early dinner, he sat down in his study in Guilford Street, Russell Square,[3] to read his briefs for the next morning, which happened to be motion day. They were brought to him in successive bags by his clerk, and when at last he had gone through the pile and had the curiosity to count them, he found

[1] See *ante*, vol. i. 72.

[2] *Blackwood*, lxxxi. 252.

[3] In the earlier and humbler days of his married life he had inhabited a house in a terrace at Islington, with a peppery and pugnacious half-pay captain next door. This Peninsular veteran took umbrage at what he considered unneighbourly conduct on Sugden's part, and after a heated *rencontre* pulled the latter's nose. Sugden thereupon brought an action for assault and battery, but Serjeant Copley, whom he had retained as his counsel, persuaded him to withdraw it from the cause list—a Chancery barrister's practice is seldom improved by entanglement in a matter which lends itself to ridicule. On the morning which should have witnessed the trial, the defendant was about to quit Westminster Hall, when he met Copley in wig and gown, smiling and jocular as ever. 'Well, Mr. Enser,' said the latter, 'we let you off easily, but you really ought not to pull a counsellor's nose.' To which Mr. Enser, unappeased and irascible, retorted, 'If you say another word I will pull your nose too.' Actually to have pulled the nose of one Chancellor and to have threatened to pull the nose of another beats the record of the late Mr. Charles Neate (*vide infra*, 227).

himself surrounded by thirty-five; he admitted afterwards that he could never have got through them had they been presented in a serried mass. And then, as the clock was only striking eleven, he called a coach and drove down to finish the evening at the House of Commons.

His maiden speech was made within a very few days of his election. On February 29, 1828, the adjourned debate on Brougham's motion for inquiry into the state of the law [1] was resumed, and Mr. Sugden, as the leader of the Chancery Bar, took part in it.[2] As became a Conservative lawyer, his reception of Brougham's speech was given in no very glowing terms; he

> hoped that the House would not suffer too large or too extensive an inquiry, which might have an unsettling effect, and he looked with no little alarm at the disposition which he saw beginning to prevail of attempting rash innovations.

But he approved cordially of the two Commissions on the procedure of the Courts of Common Law and on the law of real property of which the Chancellor had given notice,[3] and he proclaimed his willingness to see the abuses and rubbish swept away that had accumulated round the latter branch of learning: 'he did not know one lawyer attending Westminster Hall who was not willing to vote for the entire abolition of fines and recoveries.'[4]

Brougham had quoted the saying of a very learned judge that 'every line of the Statute of Frauds was worth a subsidy.' Sugden gave vent to the revolutionary sentiment that 'had Lord Holt lived to the present day he would have added "to the lawyers," for there was not a line of it which had not cost a subsidy to the country.'[5]

[1] *Ante*, vol. i. 283. [2] Hansard, 2nd ser. xvii. 897.

[3] *Ante*, vol. i. 28. As we shall see (*infra*, 17, 147), Sugden was invited to preside over the latter.

[4] They were actually abolished in 1833 by 3 and 4 Will. iv. c. 74.

[5] The most litigious sections of the Statute of Frauds (15 and 16) are now merged in the Sale of Goods Act of 1893, 56 and 57 Vict. c. 71.

He was absolutely opposed, however, to 'schemes which he must again call revolutionary and striking at the root of the happy system of laws under which the country had flourished for ages,' and when it was proposed to lay rude hands upon the Court of Chancery itself, Sugden's visage was changed altogether. In reply to an honourable member who had described the Court of Chancery as a public curse, he protested, amid 'laughter and interruptions,' that the critics of that Court consisted mainly of fraudulent trustees, and that the most discontented suitors were people of doubtful character;

any suitor really disposed to go on with a good cause could, from the manner in which the affairs of the Court were conducted, proceed with reasonable despatch to the conclusion of his suit.[1]

A certain amount of hilarity over these optimistic sentiments was not unnatural, but the frequency with which Sugden's earlier speeches are interlarded by 'laughter,' 'confusion,' and 'interruption' seems to betoken a want of popularity in the House. On one occasion when his topic, the condition of the poor debtors in the Fleet, ought to have assured him a sympathetic reception, it was only with the greatest difficulty that he was able to proceed with his speech. Universal respect was entertained for his great learning; and his readiness to support schemes for the amelioration of practical abuses conciliated the school of Joseph Hume. But he had been too long accustomed to the courteous deference of Eldon and Lyndhurst. His manner was self-assured to the verge of annoyance, while a monotonous delivery and a shrill voice, which sometimes rose almost to a scream, were not rendered the more acceptable by a rapidity of utterance which frequently baffled the reporters. There was a serious danger that the 'flippant and conceited Sugden,' as a malicious opponent styled him, might come to be regarded as a bore, and he did

[1] Hansard, 2nd ser. xix. 83, 87.

not tend to strengthen his position by the ill-advised remark made in the course of debate, that he had no great respect for the authority of Charles Fox. 'Poor Fox,' ejaculated Brougham, in one of those stage whispers which penetrated to the furthest recesses of the chamber, and the House was convulsed with laughter. Sugden was deeply mortified, and the memory of the incident did not tend to smooth the relations between the two lawyers when Brougham came to preside over the Court of Chancery.[1]

Sugden's attitude over the Catholic Relief Bill of 1829 was typical of those Tories who followed Peel in his tardy conversion. He admitted that he had always been opposed to Emancipation, that he was still opposed to it, 'standing alone,'[2] and that he had been surprised to hear it commended in the King's speech. But he was prepared to support the Bill as the lesser of the evils between which it was necessary to come to a choice.

The 'correctitude' of his conduct was speedily rewarded. On June 9, the Solicitor-General, Sir Nicholas Tindal, succeeded Lord Wynford as Chief Justice of the Common Pleas, and Sugden was appointed to the vacant office on the following day, receiving the honour of knighthood. There was a chorus of approval both at the Bar, who were glad to see equity represented once more among the law officers, and among the public at large. But the editor of the 'Morning Journal,' Mr. Robert Alexander, thought otherwise. Lord Lyndhurst was just then in deep disgrace with the extreme Protestant wing, of which the 'Morning Journal' was the organ, and in the issue for June 16 the Chancellor was roundly accused of having procured Sugden's appointment in return for a bribe of 30,000*l.*

As a specimen of the journalistic style of that epoch the libel may be here reproduced in full:

[1] Greville, 1st ser. iii. 22.

[2] *I.e.* without 'securities,' *ante*, vol. i. 46. Hansard, 2nd ser. xx. 254.

Mr. Sugden is to be Solicitor-General. The reasons which led to this promotion are really so natural that we beg leave to explain them as Sterne would have done by the mouths of his inimitable Uncle Toby and Corporal Trim.

Toby.—If a paymaster or a barrack-master lend money to his commanding officer, what shall he expect ?

Trim.—To be promoted, of course, your honour.

Toby.—If a captain, a tall broad-shouldered fellow, for instance, who has married a rich dowager, should lend 1,000*l.* to his colonel, what does he look for ?

Trim.—To be made a major, first opportunity, and, as your Honour knows, God bless you, to be placed in the way of higher preferment.

Toby.—And if a major should lend his general all his fortune, say 30,000*l.*, for instance, what then ?

Trim.—To be placed in the general's shoes, your honour, before the end of the campaign.

This is, we admit, quite satisfactory. There is reason in this merit, and there is point too in the argument which Mr. Sugden and another learned person will be at no loss to comprehend.

It was impossible for either of the learned persons to sit down under a charge of this nature. Lyndhurst promptly swore an affidavit that the paragraph was levelled at him, and could not be levelled at any one else.[1] Sir Edward Sugden swore that there was not a shadow of foundation for the charge, and the Attorney-General, Sir James Scarlett, filed an *ex officio* information against the author, printer, and publisher. Technical objections were successful in postponing the trial for several months, but on December 22 a conviction was obtained, and Alexander was sentenced by Lord Tenterden to a year's imprisonment in Newgate, and a fine of 300*l.*[2]

In his new position Sugden rapidly overcame the early

[1] *Ante*, vol. i. 73 and see *H.B.* (No. 22 in the 1st volume of his collected sketches; no date appended) for a bewitching picture of Lady Lyndhurst swearing an affidavit against another newspaper libeller before the Lord Chief Justice.

[2] Rex. v. Gutch, Fisher and Alexander: Moody and Malkin, 433.

prejudices of the House of Commons, and for the first time his gifts as a Parliamentary draftsman and a legislator had fair play. He had already stood sponsor to a Bill for further facilitating the payment of debts out of real estate, and he now grappled with the abuses attendant upon the process of contempt of Court. He was genuinely concerned for the fate of those unfortunate creatures who were held, sometimes through no fault of their own, in what might amount to lifelong imprisonment in the Fleet or the King's Bench. He made a practice, even in the midst of his overwhelming engagements, of visiting the prisoners, of conversing with them and giving them gratuitous advice, not infrequently procuring their discharge by payment out of his own pocket. These surprise visits often brought curious facts to light, as the following extract from his speech in introducing his Bill will show:

When he first visited the Fleet, he found, he believed, thirty-seven prisoners there for contempt of the Court of Chancery; one had been there for nineteen years, another for sixteen, a third for twelve, a fourth for ten years, and so on, with others for shorter periods. He found also, to his great astonishment, that the persons sent there by, and thus considered victims of, the Court of Chancery, all held the most lucrative situations in the prisons. The cook had been confined 'in contempt' for six years, although he need not have remained there for six days had he chosen to give up his flourishing office. The hotel keeper had been ten years in prison, without the slightest necessity for stopping there, and his place was worth, he was informed, from 200*l.* to 300*l.* a year. The individual who occupied the tap [1]—a situation worth from 150*l.* to 200*l.* a year—had been committed for contempt and had already remained there for six years. Another person was a solicitor; he had been in the Fleet three years, and need not have been there as many days; but he was now domiciled and practised his profession with much success. He had, however, found in similar

[1] For this office the reader is referred to *Pickwick* and to *Little Dorrit*.

confinement one gentleman who had for thirteen years been in a state of imbecility, and was therefore utterly incapable of putting in any answer to a bill in Chancery. Had he died he would, indeed, have been lamented over as one of the victims of the Court; but what was the fact? He had been kept in prison for the convenience of others; and he had made no hesitation in telling those others that if they did not set him at liberty he would issue a Commission of Lunacy against the imbecile gentleman and have a guardian appointed. What was the result? In December, 1829, an order for his discharge was produced by his friends dated August, 1827, which, for their own purposes, they had till then kept in their pockets, and would have allowed him to die a victim to the Court of Chancery.[1]

But there were grave and crying abuses none the less; the Courts of Equity had no power to release prisoners for contempt without the plaintiff's consent, and contempts for mere non-payment of money or costs could not be cleared away under the Insolvent Acts, so that many men who were 'committed' did actually die in prison. By the Act 11 Geo. iv. and 1 Wm. iv. c. 36, Sugden devised an improved form of procedure which on paper left little to be desired, though we shall find him, a quarter of a century later, challenged fiercely as to its practical working.[2] And before the close of the session he carried a useful little measure for simplifying the transfer of estates vested in trustees and mortgagees.[3] He was less successful with Lyndhurst's Bill for the reform of Chancery procedure. His speeches suffered neither from obscurity in exposition nor from want of acquaintance with the minutest details of his subject, but the boisterous hostility of Sir Charles Wetherell and the lukewarm support of the professed law reformers were fatal.[4]

It fell to his lot to represent the Ministerial opposition to Mr. Robert Grant's Bill for the removal of Jewish

[1] Hansard, 2nd ser. 371. [2] *Vide infra*, 35.

[3] 11 Geo. IV. and 1 Wm. IV. c. 60, s. 65, and see *Sir Edward Sugden's Acts*, by C. F. Jemmett.

[4] *Ante*, vol. i. 71.

disabilities on the night when Macaulay delivered his maiden speech.[1] The Solicitor-General decorously complimented the Member for Calne on the 'great credit which he had done himself by the performance,' but there was something essentially antipathetic in the natures of the two men. Macaulay seemed to take a peculiar pleasure in 'going for' Sir Edward, and in rebuking him, with all the assurance of a new Member, now for 'misplaced delicacy,' now for 'vindictive sentimentality.'

Sugden was elected again for Weymouth at the General Election of 1830, and on the resignation of his colleagues in the following November, he went back to his private practice at the Bar. Some little time previously he had refused the Chairmanship of the Real Property Commission, strongly pressed upon him by Lyndhurst.

'He would take no denial,' Sugden wrote, many years afterwards, 'but I felt that it was impossible for me, with my engagements at the Bar, to give to it the labour which would be exacted from me.'[2]

More fortunate than many of his friends, he secured a seat in the Parliament of May 1831. Mr. Stanley Weyman has recently shown us, in pages as graphic as they are accurate, how the Tories awoke from their dreams to find the days of ascendancy gone for ever, and how rotten boroughs vied with county freeholders in ejecting the party which had ruled England for nearly forty unbroken years. Weymouth was pronounced hopeless, and Sir Edward Sugden found his Zoar in the snug little Cornish borough of St. Mawes, where a single ten-pound householder sent two representatives to Westminster.

When the Reform Bill was reintroduced in June he formed one of the small band who fought it clause by clause and line by line. There are few points in the game which the obstructionists of a later generation

[1] April 5, 1830. Hansard, 2nd ser. xxiii. 1330.

[2] *Misrepresentations in Campbell's Lives of Lyndhurst and Brougham corrected by St. Leonards*, 44. Cited hereafter as *Misrepresentations, &c.*

could have taught the Tory stalwarts who rallied round Peel and Praed and Pelham. Sugden was honourably conspicuous, but he seems to have got in only eighteen speeches in Committee as against fifty-seven by Croker and fifty-eight by Wetherell. He maintained, indeed, that his amendments were intended as a genuine effort to improve the Bill, and when he found that Ministers refused absolutely to regard them in that light, he withdrew from the discussion in a chafe.

When in May 1832 the Duke and Lord Lyndhurst made their desperate effort to free King William from his 'tyrannical Minister,' they were aided by 'the tenacious ambition of Sir Edward Sugden,' who would undoubtedly have held high office had the incipient cabinet ever gone to allotment. He faced the furious Commons on those nights when pandemonium seemed to have broken loose,[1] and when staid Whigs like Macaulay were girding up their gowns for revolution. Amid the din and uproar he assured an unsympathetic audience that 'the noblest act of the long and disinterested life of the Duke of Wellington was the acceptance of office at a crisis so dangerous to the Constitution.'[2]

Five years were to elapse before Sugden was to have practical experience of the reformed House of Commons. He was defeated at Cambridge in December 1832,[3] and again by a very narrow margin at a by-election in June 1834. His acceptance of judicial office under Peel prevented him from standing for Parliament in 1835. But in 1837 he was returned, together with his rival at the Equity Bar, Mr. Pemberton Leigh, for Ripon, whose patroness, Miss Laurence of Studley Royal, had recently veered round to the Tory allegiance.

In the interval much had happened. The change from Lyndhurst to Brougham in the Court of Chancery had been especially unwelcome to him. The former had

[1] *Ante*, vol. i. 95.

[2] Hansard, 3rd ser. xii. 935.

[3] 'It is feared that the indiscreet interference of the Vice-Chancellor in favour of Sir Edward did much harm to his cause' (Raikes' *Journals*, i. 245).

rapidly mastered the Equity practice sufficiently to dispose lightly of the day's routine, and his keen intelligence, his strong judicial instinct, and, above all, his patience and silence during the hearing of an argument rendered his Court an ideal tribunal for a man of learning and capacity. Brougham's demeanour on the Bench has been described already;[1] a natural restlessness and complete absence of all sense of decorum contended in him with a love of display and a pride in discharging as many duties simultaneously as tradition has assigned to Julius Cæsar. Sugden had been too long the 'cock of the walk' in Chancery, and the position had not improved a temper naturally overbearing and impatient of contradiction; and he was too prone to indulge in that snappishness towards his juniors which had become an evil tradition of the Equity Bar: 'them wolde he snybbe scharply for the nones.' To a man deeply versed in his subject, keenly zealous for his clients, and endowed beyond all his contemporaries with the power of rendering the most abstruse subjects clear and interesting, Brougham's ostentatious preoccupation was intensely galling.

During the earlier days of the Chancellorship a man would come into Court bearing something like a large mahogany dinner-tray, laden with letters and papers of all sorts, to which Brougham devoted himself, interposing every now and then a question, more or less irrelevant and often founded on some purely erroneous assumption. Sugden had smarted under the Chancellor's lash in the House of Commons, and he was resolved, in the interests of his clients and of the Bar, to put some check on what was becoming an intolerable scandal. One morning as Brougham was absorbed in the contents of his letter-basket while Sugden unfolded an elaborate argument, the latter came suddenly to a dead stop in the midst of a sentence.[2] But the Chancellor was not so easily put out of countenance; after a considerable pause, and without

[1] *Ante*, vol. i. 21.

[2] Campbell's *Life of Brougham*, 386.

raising his eyes, he merely said, 'Go on, Sir Edward, I am listening to you.' With all the weight of offended dignity Sir Edward replied:

'I observe that your lordship is engaged in writing, and not favouring me with your attention.' 'I am signing papers of mere form,' was the rejoinder, whether truthful or not we have no means of judging, 'you may as well say that I am not to blow my nose or take snuff [1] while you speak.'

The 'laughter in Court' which followed was at Sugden's expense, but the dinner-tray nuisance was not repeated.[2]

This passage at arms did not improve relations between the Chancellor and the leader of his Bar, and Sugden's bitter saying that if Brougham knew a little law he would know a little of everything could hardly have failed to reach the ears of its object. Matters were brought to a head by an incident out of doors. In July 1832, when Brougham was engaged in preparing his Bill for the abolition of certain Chancery sinecures, a son of Lord Eldon, who held one of them, died unexpectedly. Sugden gave notice to Horne, the Solicitor-General, who was his ordinary medium of communication with the Chancellor, that he proposed to ask in the House of Commons whether it was intended

[1] Sir William Grove and Lord Russell of Killowen were, I believe, the last of the snuff-takers on the Bench. 'I never bring anything into Court with me but my snuff-box and my spectacles, and I am d——d if I can ever find either of them' was an *obiter dictum* overheard by the Associate on the Western Circuit.

[2] It is an ill wind that blows good to no one. A year or two after his call, Mr. Alexander Cockburn had a motion in the Chancellor's Court. Brougham was engrossed with his correspondence, and took no notice of the argument except to say curtly at the conclusion of counsel's speech, 'Motion refused.' On the following Western Circuit Mr. Cockburn was astonished by the delivery, at Exeter, of four briefs from a solicitor, of whose existence he had hitherto been ignorant. Having satisfactorily disposed of the cases, he asked the client the reason for which he was indebted to this sudden patronage. 'I was in Court, Mr. Cockburn, when you made that motion, and when I saw the Chancellor taking down every word you said, I made up my mind that if ever you came Exeter way you were the man for my money.'

to fill up the vacant appointment. Dilatory as usual, Horne forgot all about the message, and during the small hours of the next morning Sugden was startled to hear the Government Whip moving a new writ for Kendal, the seat having been vacated by James Brougham on appointment as Registrar of Affidavits.

On the face of it the promotion of the Chancellor's brother to this scheduled billet was a gross abuse, and the same afternoon Sugden drew attention to it in what, under the guise of a question, was a vigorous and almost a venomous attack.[1] Neither the Attorney-General nor Lord Althorp was provided with any answer, but late in the evening Denman announced that he had the Chancellor's authority for saying that the appointment was only temporary, and that, by placing his brother in the vacant seat, he could most effectively defy resistance from vested interests.[2] Brougham himself was perfectly furious at having been assailed without notice—for Horne had taken no steps to repair his original omission—and in the House of Lords on the following day he overwhelmed the absent Sugden with all the sarcasm and contumely at his command.

The latter had declared, in anticipation of Rosa Dartle, that he had only asked for information.

My Lords, said the Chancellor, we have all read that it is this heaven-born thirst for information, and its invariable concomitants, a self-disregarding and candid mind, that most distinguishes men from the lower animals: from the wasp that stings and from the ant that fain would but cannot sting; distinguishes us, my Lords, not only from the insect that crawls and stings, but from that powerful because more

[1] Hansard's report (3rd ser. xiv. 721) scarcely bears out Greville's description of it (*Memoirs*, 1st ser. ii. 313) as a long vituperative speech, but its character is pretty plain from the tone of the subsequent debate. (Hansard, *loc. cit.* 827.)

[2] I must own to a little scepticism as to Brougham's original intentions. He was a very good brother, and James was his favourite. There is a story of his being pressed to some peculiarly flagitious job and exclaiming, 'No, no! It won't do; it's only a fortnight since I made Johnny Williams a Judge.'

offensive creature the bug, which, powerful and offensive as it is, after all is but vermin. Yes, I say, it is this laudable propensity upon which humanity justly prides itself, which, I have no doubt, solely influenced the learned gentleman to whom I allude to seek the information which it would be cruelty to gratify stingily.[1]

It is hard to credit that such language, applied to one of their members, could have found defenders in the House of Commons, but the Whigs of that day were staunch and true. Macaulay asked if it was to be wondered at that the Chancellor should express his indignation warmly and in contemptuous terms.[2] Nor was Sugden less bitter and contemptuous. He had been personally insulted and abused, he declared, in the grossest manner by the use of offensive epithets from a vulgar vocabulary, in language which no private gentleman should either utter or submit to. But though he had lost, and lost for ever, all personal respect for the man who had stooped to the use of such expressions, he was yet bound to silence by the respect which he entertained for his office. According to Greville,[3] it was generally considered that Brougham had had the worst of the encounter: 'for it is worse for a man in his station to be in the wrong, and more indecent to be scurrilous, than for an individual who is nothing.'

This is but cold commendation for Sugden, who, according to the diarist, 'now declares he will bring on a motion he has long meditated on the subject of the Court of Chancery, in which he will exhibit to the world the whole conduct of Brougham since he has held the Great Seal.' Fortunately, Sir Edward did not allow his resentment

[1] Hansard, xiv. 736.

[2] *Ibid.* 827 *et seq.* It was unfortunate that none of the Peers had spoken in Sugden's defence. They knew nothing of the undelivered message, and he undoubtedly seemed guilty of a breach of Parliamentary courtesy. Eldon, who possibly felt a little nervous on the subject of that particular sinecure, went out of the way to compliment Brougham on his disinterestedness. See *Mirror of Parliament* (1832), ii. 1253, 3364.

[3] 1st ser. ii. 314.

to carry him so far, and the first overtures for reconciliation came from the Chancellor. The morning after the debate the old Hall at Lincoln's Inn was crowded with spectators assembled to witness the anticipated bickering. As Sugden forced his way through to the seats within the Bar, he found the Chancellor already in his chair, with a note-book open before him upon which his eyes were intently fixed, 'and I think I may venture to say that he never looked off his book until he rose in the afternoon.' There was nothing in the shape of an altercation on that or on any future morning, and business took its ordinary course, but with an icy politeness on the part of judge and counsel; and, when cases were heard in the Chancellor's private room, he no longer came forward and shook hands with the leaders, but sat rigidly with note-book before him, only acknowledging their presence by a slight salute.[1]

Matters had continued on this footing for some time, when one day Lyndhurst, now Chief Baron, strolled nonchalantly into Sugden's chambers.[2]

Non meus hic sermo, he explained, I have refused to come to you, although desired to by the Chancellor, but now he has written to me, and I cannot refuse to do as he desires. He wishes to offer you the place of a Baron of the Exchequer (arrangements being made to prevent your being required to go circuit, or act as a common law judge),[3] the Privy Council, and the Deputy Speakership of the House of Lords.

Sugden returned a peremptory refusal.

Tell the Chancellor, he said, that, whilst things remain as they are, there is nothing which he can ever have to offer which I would accept.

Lyndhurst wisely left the message undelivered, but with more questionable wisdom he omitted to show to Sugden the Chancellor's letter, which spoke in high but

[1] *Misrepresentations, &c.*, 24. [2] *Ibid.* 26.

[3] Yet it was on the alleged impossibility of affecting a similar arrangement that the negotiations with Sir William Horne broke down a few months later (*ante*, vol. i. 390, 391).

not exaggerated terms of the pleasure which acceptance of the offer would give him.

A few days subsequently, it devolved upon Sugden to wait upon the Chancellor with a remonstrance from the Equity Bar against a highly unpopular order he had just issued involving the curtailment of the Long Vacation. Brougham received him most graciously, but, when the business was over, the visitor expressed his regret at being compelled to say something which might prove disagreeable.

'Good God!' cried Brougham, 'what can you have to say that is disagreeable to me?' 'When I entered this room,' was my reply, 'you held out both your hands; taken by surprise I accepted one of them. I am compelled to tell you that, while things remain as they are, these are terms upon which we cannot meet.' 'What, have you not seen Lyndhurst? Have you not received a letter from me?'

Sugden pleaded guilty to the former, but not to the latter count.

'Well then,' said Brougham—and, adds Lord St. Leonards,[1] it was so like him—'I will give you secondary evidence of its contents,' which he did. I remained silent, and he then said, 'I think, if I had been in your place, I should have thought such a letter and such an offer a full satisfaction.' Still I remained silent. Gathering himself up, and turning half away, he said, 'Well, I think when a man feels he has done wrong the sooner he says so the better.' I went up to him, gave him my hand, which he grasped kindly, and I said, 'I am much obliged to you, and I shall never again think upon what has passed.'[2]

[1] *Misrepresentations*, &c. 28.

[2] A subsequent letter from Brougham was forwarded to Sugden by Lord Lyndhurst; a copy of it was preserved by Lord St. Leonards among his papers, which I here transcribe:

'My dear Lord L.,—In consequence of what you mentioned yesterday afternoon, I cannot help saying again as I then did, that Sir E. S. might be quite sure I never should have made a proposition to him which I really regarded (and stated) to be asking him to do me a favour unless I had conceived that what I said in the H. of Lords after the occasion he alluded to was (as it was intended to be) an

From this interview down to the end of Brougham's life he remained good friends with Sugden, though the latter did not disguise his opinion of the Chancellor's demerits as a judge. Their mutual relations, however, in the Court at Lincoln's Inn were not destined to any long continuance. The same breath of fortune which removed Brougham for ever from the Woolsack wafted Sugden across St. George's Channel as Lord Chancellor of Ireland, to which post in those days an Englishman was almost invariably preferred.[1] 'Peel is much elated,' wrote Greville,[2] 'at having got Sugden to go to Ireland,' as well he might be, in view of the precarious prospects of the ministry and of the sacrifice of income entailed by the abandonment of the finest practice at the English Bar.[3]

expression with which he ought to have been satisfied, and with which, in his place, I should certainly have been. Indeed, I went further, for I said how much concerned I was to find those connected with him had suffered any uneasiness.

'When I call the proposition asking a favour I am quite aware that it was for the public I was asking it, but I must add that I should have felt personally how much I had distinguished my administration (that is, the Law department of the Government) by an appointment so highly beneficial, and so much beyond what any one had a right to expect to the office, important and most respectable as it is. I was *fully aware* of the sacrifice he was asked to make. Ever very sincerely,

'Yours, H. B.'

[1] Yet only a few years previously Plunket had been compelled to surrender the Mastership of the Rolls in England on account of the feeling at the English Bar against a member of the Irish Bar being appointed to an English judicial post.

[2] 1st ser. iii. 178.

[3] To take a single volume of the *Law Reports*, out of thirty-five cases reported in 7 Simon (1834), Sir Edward Sugden appears as counsel in twenty-seven. His last appearance as an advocate was in Kennedy *v.* Green (iii. Mylne and Keen, 723), the last case in which Lord Brougham delivered judgment as Chancellor (*ante*, vol. i. 338, 393).

CHAPTER II

LIFE OF LORD ST. LEONARDS FROM HIS FIRST CHANCELLORSHIP OF IRELAND TO HIS DEATH

1834–1875

SUGDEN was sworn in as Chancellor of Ireland on January 13, 1835, and surrendered the Great Seal at the end of April, as soon as the Ministerial arrangements consequent upon Peel's resignation had been completed. On the 22nd of that month, after he had given a decision on some vexed questions connected with the remuneration of the officials of the Court,[1] the Attorney-General[2] rose and asked if his Lordship intended to sit again. Receiving an answer in the negative he proceeded to address the Chancellor, the whole Bar standing in token of respect:

My Lord, I should do great injustice to my own feelings, and, I am persuaded, to those of the Bar of Ireland if I allowed your Lordship to retire from that seat without attempting, however feebly, to convey to your Lordship the impression of the deep sense which we entertain of the eminent ability and dignity of demeanour with which you have discharged the important duties of your high office. Short as has been the period of your Lordship's elevation, it has afforded ample opportunity for the display of judicial powers of the highest degree of excellence. Had that period been still shorter—had it been limited to the observation of a single day—it would have been sufficient to have impressed us with an indelible conviction of the profound, extensive and accurate learning, the patience and discrimination, the masterly

[1] Lloyd and Gould, cases *tempore* Sugden, 380. It was suggested that '*momento* Sugden' would be a more appropriate title.

[2] The Right Honourable Francis Blackburne.

exposition and application of the authorities and principles of equity, and above all of the ardent love of justice and elevation of moral feeling which marked and distinguished your judgments. I have only to add our acknowledgments for your uniform urbanity and kindness, and to assure your Lordship that you bear with you our regret at your retirement and our most anxious wishes for your future happiness and welfare.

This was no mere lip-service. Sugden's legal attainments, his industry, and the close attention which he never failed to bestow upon those who had anything pertinent to urge, and who confined themselves to the points at issue, had fairly earned him this unprecedented compliment;[1] and it is no disparagement to the acute and patient lawyer whose place he had taken to say that he was as superior to Lord Plunket in knowledge of the law as the latter surpassed him in Parliamentary oratory.

On his return to England he found himself for the first time in his life at full leisure. Return to the Bar was precluded by professional etiquette to one who had held judicial office, though it was forbidden by no rule, and there were precedents in Caroline and Jacobean times. The mere rumour that he might elect to follow the example of Pemberton and Levinz[2] sent a thrill of despair through the Chancery counsel who had taken silk upon his elevation. He was out of Parliament, and he does not appear to have been summoned to sit in the Judicial Committee; characteristically he turned to his books. During his overwhelming business at the Bar he had found, or made, time to keep his precious treatises noted up to date, and down to the very close of his life few days were allowed to elapse without some addition being made to their contents. In 1836 the sixth

[1] He had, however, very pronounced dislikes, as the father of a most eminent member of the English judicial Bench, happily still alive, had constant opportunity of discovering.

[2] Campbell's *Lives of the Chief Justices*, ii. 302.

edition of his 'Powers,' and in 1839 the tenth edition of his 'Vendors and Purchasers' made their appearance, to be followed in their turn by successive revisions and recensions.

It has been objected that in these later editions too much space is occupied in dissenting from judgments pronounced since the author had left the Bar,[1] a defect that was conspicuously absent in his 'Concise and Practical View of the Law of Vendors and Purchasers of Estates,' published in 1851; and the controversial matter found a more congenial atmosphere in 'A Treatise on the Law of Property as Administered in the House of Lords,' published in 1849. Mr. Bryce has a graver fault to find with his legal writings.[2] While admitting that they secured an authority unsurpassed, if indeed equalled, by any law books of the last century, and that they display the same acuteness and ingenuity in arguing from cases that distinguished his forensic career, he complains that they are

> a mere accumulation of details unillumined and unrelieved by any statement of general principles, and that, in literary style no less than in the cast and quality of his intellect, he is harsh and crabbed.

To this criticism it may fairly be objected that when writing for the layman and the unlearned, no one could be more translucently simple than Sir Edward Sugden, and Lord Campbell once said from his seat as Chief Justice that if it were proposed to pass an Act declaring that everything in Lord St. Leonards' famous 'Handy Book' on real property was law he would support it.[3]

As we have seen, Sugden re-entered Parliament in

[1] *E.g. Law Review*, xiv. 55. 'The whole legal world and its doctrines are by him considered to be in abeyance; or, like the Court in the fairy tale, all the Judges and all the Bar have been transfixed by an involuntary sleep in the very position that they occupied when he left them.'

[2] *Studies in History and Jurisprudence*, ii. 199.

[3] *Misrepresentations*, &c., 50.

1837, and he is described by one who now saw him for the first time [1] as

short and compactly made, with abundance of darkish hair, and showing little of the thoughtful expression of his trade; lively and cheerful, with rosy cheeks, and free from wrinkles at fifty-five.

During his exile from St. Stephen's he had struck a blow against the Whig Government which was fruitful in consequences. In a trenchant pamphlet [2] he had drawn attention to the intolerable confusion which had arisen out of the expedient of putting the Great Seal in commission. Within a few days of its appearance Pepys was appointed Lord Chancellor, and a most potent force, in the person of the infuriated Brougham, was added to the elements which eventually brought Lord Melbourne and his colleagues to the ground. On his return to the House Sugden left general politics for the most part severely alone, but took a leading part in the discussion of all measures affecting the administration of the law.

It must be admitted that his attitude towards law reform was not at this epoch peculiarly sympathetic. He branded, as a measure for facilitating divorce, Serjeant Talfourd's Custody of Infants Bill, by which access to her children was given to a woman living apart from her husband.[3] He differed from the lawyers on his own side of the House in opposing Lord Cottenham's proposals for the creation of two additional Equity Judgeships.[4] He objected to the extension of copyright on the ground that the twenty-eight years secured under the Act of Queen Anne formed a reasonable period.[5]

[1] Grant, *British Senate in* 1838.

[2] *What has become of the Great Seal?*

[3] Hansard, xliii. 143. [4] *Ibid.* lvii. 1029.

[5] Considering the valuable nature of his own copyrights Sugden is entitled at any rate to credit for disinterestedness. He is said to have made 40,000*l.* by his pen; and nature bestowed a far longer protection upon the 'Powers' and the 'Vendors and Purchasers' than the term suggested by Lord Mahon and Serjeant Talfourd.

But it was to the Wills Act, based on the recommendations of the Real Property Commissioners and passed just before his return to Westminster, that Sugden showed himself most bitterly hostile.

One of his earliest speeches was a motion to suspend the operation of the Act for three months until an effort could be made to amend it.[1] Read in the light of seventy years' experience, and with knowledge of the anomalies and uncertainty of the old law, his objections and vaticinations seem sounds of little meaning, but we shall see that eventually he introduced a salutary modification of the newly imposed rules for the execution of a will.[2] The motion was negatived without a division, but this assault on a measure for which he had been officially responsible as Attorney-General was a blow to the susceptibility of Sir John Campbell. An irritation was set up between the two which endured far beyond the first Parliament of Queen Victoria, and has left traces in the posthumous volume of the noble biographer. Sugden himself was easily ruffled, and not peculiarly effective in retort. One evening a desultory debate had been raging over something which Bishop Phillpotts had or had not said about the Roman Catholics. Sugden had warmly championed that prelate, and when the subject dropped he asked leave to put a question to Campbell. 'Is it relative to the Bishop of Exeter?' asked Sir John, a witticism which was received with the Parliamentary equivalent for 'laughter in Court.' But Sugden was not in the least amused; he requested the honourable and learned member,

[1] Hansard, xxxix. 521.

[2] *Infra*, 41. Prior to the Wills Act (9 Wm. IV. and 1 Vict. c. 26), no freehold property could be devised without a will attested by three witnesses, whereas copyholds and personalty of any value or amount could be bequeathed by will without any witnesses at all, and it was not even imperative that the will should be signed by the testator. The provision that bequests of personalty and realty must be executed in exactly the same manner and attested by two witnesses was denounced by Sugden as uncalled for, and out of harmony with the wishes of the majority of the community.

whenever he should feel it his duty to address the House on matters of public business, not to insult him by asking him across the table whether what he had to say was relative to the Bishop of Exeter,

and he declared that for the future he would decline to serve on any committee of which the Attorney-General was the guardian. In the acrimonious wrangle over Stockdale *v.* Hansard, Sugden, together with most of the independent lawyers in the House, supported the freedom of the Judges against the privileges of the House of Commons, and was thus brought once more into collision with the Attorney-General.

On the formation of Sir Robert Peel's second Ministry in 1841, Sugden was confirmed in his old appointment, though it was popularly supposed that his ambition lay in the direction of the Speaker's chair.[1] He was not at all desirous to exchange his charming home at Boyle Farm for the splendours of Dublin, especially as Peel declined to give him a peerage on the ground that three Irish judges were already clamouring for that distinction. And Peel, on his side, was anxious to induce Sir Edward to remain in England and accept one of the newly created Equity Judgeships, in which case it was hinted that, from his reputation and station, he might fairly look for a seat in the House of Lords. Sugden was much piqued over the whole business, and he preserved among his papers the memorandum of an interview with Lord Eliot, who had been seen as an informal intermediary.

I told him that I did not care a rush about a peerage, but I thought it more important to the Government than it was to me. For I was to be sent to Ireland with politics disagreeing with the great majority of the people, and they would draw a comparison between the favour of the Crown

[1] The Tories finally resolved, though not without a strong difference of opinion, not to oppose the re-election of Mr. Shaw Lefevre, afterwards Viscount Eversley.

shown to the last Chancellor,[1] and that shown to me, and he was taken at once from the Bar, and I had already been there. But I expected no favour from Sir Robert Peel and I never would mention the subject again as long as he was in power. . . . I said that if Sir Robert Peel would give me any step in the peerage I chose to name if I would accept one of the judgeships, I would at once reject it; that my reputation, such as it was, did not depend upon Sir Robert Peel or any other man, but upon my estimation as a lawyer, and that now and hereafter that would be the ground upon which my fame and memory would depend; that I thought the acceptance of an inferior judgeship would degrade me, and that a peerage would not remedy the disgrace, and this I thought the best proof I could give that a peerage, with me, was not the primary object. I would go to Ireland because I thought it my duty.

He was welcomed back to Ireland with open arms by a Bar smarting under the supersession of Lord Plunket,[2] and little reassured by the harangue on the administration of equity to which Lord Campbell had treated them during his short tenure of office. He had now an opportunity of showing that the eulogies which had been showered upon him on his former resignation were not misplaced, and for five years he discharged his duties, judicial and administrative, in a way that earned him admiration and respect, without distinction of creed or party. He was equally at home in delivering a weighty and considered judgment, or in coping with the daily emergencies of Court work. Unsparing of time and labour where he entertained any doubt, his vast experience and his habits of literary composition generally enabled him to give judgment as soon as counsel had sat down. His memory was as retentive as that of Lord Lyndhurst; he hardly ever took a note, and the form of his decisions was as perfect as their matter. In dealing *ex tempore* with some case of first impression, where the acutest minds had differed, he seemed to the delighted audience

[1] Lord Campbell.

[2] *Infra*, 171.

to be reading, or rather reciting, a chapter from his book on Powers. On one occasion,[1]

> at the close of a learned argument by the most eminent counsel in Ireland, on the Chancellor's inquiring whether the parties wished him to decide the question or send a case to a Court of law, and on being informed that it was the general wish that his Lordship should decide the case at once, he did so *instanter*, and elaborately, though it happened that he had not taken a single note of any argument or case cited by counsel.[2]

And upon his expressing an intention of reverting to the practice of written judgments, the leaders of his Court begged him to continue to deliver them *viva voce*.

The later years of his Chancellorship coincided with the ruin of the Irish landlords, which was one of the consequences of the Great Famine. And the Encumbered Estates Court, though due to the initiative of Peel, was founded on a scheme drawn up by Sugden; he subsequently refused the Chief Judgeship in that tribunal when offered him by Lord John Russell.[3] In Ireland, as in England, the care of the insane is entrusted to the Keeper of the Great Seal, and Sir Edward Sugden displayed a personal interest and activity in visiting lunatic asylums, public and private, and in drawing up orders and regulations with his own hand, which practically inaugurated a new era. Many stories got about relative to these surprise visits of the Chancellor, and it was alleged that on one occasion he was detained as a lunatic by officials who had been maliciously forewarned that they were to expect a gentleman who laboured under the delusion that he was Chancellor of Ireland. The contemporaries and countrymen of Charles Lever were equally capable of devising the hoax or inventing the story. Sugden, when questioned by Campbell,[4] denied that there was any foundation for it.

[1] Stackpool *v.* Stackpool, 4 Drury and Warren, 320.
[2] Blackwood, lxxxi. 255. [3] *Misrepresentations*, &c., 49.
[4] *Life of Lord Campbell*, ii. 231. The late Archbishop Trench,

Sugden's strong political views were kept in honourable abeyance during these years of office. He resolved that the administration of the law should be free from all taint of partisanship. He refused to appoint any man a magistrate who belonged to the Repeal Association, and he excited a storm of disapproval by removing simultaneously the names of Lord French and Mr. O'Connell from the Commission of the Peace. An angry debate ensued in the Upper House, in which the Repealers among the Irish Peerage were reinforced by Lord Lansdowne, Lord Campbell, and Lord Cottenham. Sugden's conduct was denounced for being unconstitutional, unjust, and inexpedient, but the Government stood firmly by him. Brougham assailed the assailants with all his exuberant oratory, and Lyndhurst declared with grave earnestness, that if the Chancellor of Ireland had failed to dismiss the recalcitrant magistrates, he would have failed in his duty to his Queen and country.[1]

As the Repeal meetings grew more frequent and more tumultuous, Sugden redoubled his activities, and among the magistrates removed by him was Smith O'Brien, destined a few years later to appear in armed insurrection against the Crown. It was the resolute action of the Chancellor and the Lord Lieutenant,[2] in proclaiming the Clontarf meeting announced for October 8, 1843, which gave a blow to the prestige of the Liberator from which he never recovered.

On the fall of Peel in July 1846, Sugden quitted Ireland for the last time. Though George Ponsonby had led the Whigs in the House of Commons for some years after his resignation of the Irish Seals, Sir Edward decided that it would be more dignified to withdraw finally from the popular assembly, and in his pleasant retreat at Boyle Farm he solaced himself once more

when questioned as to the accuracy of a very racy anecdote which was in circulation about himself, replied with a groan, that it came from the 'Peterborough mint,' presided over at that moment by Bishop Magee, almost the last of the Irish humorists.

[1] Hansard, lxix. 1082 and lxx. 1170. [2] Earl de Grey.

with the annotation and rewriting of his text-books. In 1849 he published the 'Treatise on the Law of Property as Administered in the House of Lords,' which has been already alluded to, and which Brougham compared with Bentley's 'Phalaris'—'a book no scholar can lay down when he has once taken it up, and exercising an almost equal fascination over those who are no scholars.' In the following year a literary adventure of another character was thrust upon him by the lively pen of Charles Dickens, then busily engaged in collecting material for 'Bleak House.' 'Household Words' for December 7, 1850, contained an article on 'The Martyrs of Chancery,' written in the novelist's most slapdash style.

The unhappy persons confined in the Queen's Bench for contempt of court . . . unlike prisoners of any other denomination, are frequently ignorant of the cause of their imprisonment, and more frequently still are unable to obtain their liberation by any acts or concessions of their own. There is no act of which they are permitted to take the benefit, no door left open for them in the Court of Bankruptcy. . . . Disobedience to an order of the Court of Chancery—though that order may command you to pay more money than you ever had or to hand over property which is not yours and was never in your possession—is contempt of court. For this there is no pardon, you are in the catalogue of the doomed, and are doomed accordingly . . . men have been imprisoned for many years, some for a life-time, on account of Chancery proceedings of the very existence of which they were almost in ignorance before they 'somehow or other' were found in contempt.

In a two-column letter to the 'Times' of January 7, 1851, Sir Edward Sugden had no difficulty in showing that the invective of Dickens, and in particular the statement that there was no Act of which the martyrs could avail themselves, however applicable it might have been to the England of twenty years earlier, was now entirely beyond the mark. Under his own Act,[1] every prisoner for contempt had to be brought

[1] 1 Wm. iv. c. 36.

before the Court of Chancery within thirty days of his committal, and in default of this process the gaoler was compelled to liberate him at once without payment of costs. A Master in Chancery was required to visit the Queen's Bench every quarter, and explain their remedies to the prisoners; and even if any prisoner neglected to apply for his release, the judge had power to release him and pay the costs out of the funds in Court.

He stated, moreover, that a couple of months before the appearance of the article in 'Household Words' he had himself paid one of his visits to the Queen's Bench. The lamentable cases enumerated by Mr. Dickens were almost entirely imaginary; the martyrs were detained not for contempt but for debt, of which they could at any moment be relieved, like ordinary debtors, under the Insolvent Act. Mr. Dickens had quoted the instance of a man who had just been released after seventeen years' imprisonment 'by mistake.' The case had attained notoriety through the press, and was identified as that of a man named Taylor. Sir Edward showed that his contempt had been purged fourteen years ago, and that his detention arose out of a debt which had nothing to do with Chancery. It was against the whole system of imprisonment for debt, he urged, that Mr. Dickens should direct his energies; at present his tone was only calculated to divert public sympathy into the wrong channel.

Dickens promptly returned to the charge,[1] but his defence mainly consisted of an attack upon the Court of Chancery in general, and a complaint that Sugden's Act, of which it was pretty clear that he had now heard for the first time, was inoperative through the ignorance and oversight of those whose duty it was to visit the prison. Sifting evidence was not the forte of one whose warm heart prompted him to listen too confidingly to every *ex parte* tale of wrong, especially when it touched

[1] *Household Words*, vol. xlvii. 493 (Feb. 11, 1851).

the existence of the new Poor Law, the Government Offices, or the Court of Chancery.[1]

During those years of seclusion, Sugden made one solitary appearance in public. The restoration by Pope Pius IX. of the Roman Catholic hierarchy in England fell, in September 1850, like a bombshell among a Protestant population, and a Whig Ministry who imagined that the 'Catholic claims' had been satisfied for all time by the Act of 1828. Lord John chalked up 'No Popery' on the shutters and ran away; Mr. Macaulay, in his snug chambers in the Albany, congratulated himself on the rising temper of the proletariat against what he styles 'that execrable superstition';[2] and Sir Edward Sugden took part in a Surrey County meeting called to denounce the Papal Aggression. According to the 'Times,'[3] his speech combined

a spirit of toleration and charity with a masterly exposure of the hollow sophisms of the Romanists and their pseudo-liberal apologists, and an exposition of the law showing indisputably that whatever difficulty may lie in the way of punishment there is no doubt that an offence has been committed.

And the author of the article went on to assert that the name of Sir Edward Sugden was at once the ornament and reproach of our legal annals.

Unrivalled in the depth and minuteness of his knowledge of the more abstruse branches of the law, unequalled for logical power and critical acumen in discharging the duties of an advocate, a writer of the rarest excellence, a judge of unwearied diligence, and of authority second to none, he has been condemned by the vicissitudes of party and our wretched system of political judgeships to pass the latter years of his valuable life in comparative obscurity and retirement.

[1] One's confidence in the facts cited in the Preface to *Bleak House* is somewhat shaken by their being bracketed with a defence of the doctrine of death by spontaneous combustion.

[2] *Life of Lord Macaulay*, ii. 286–7: 'To Brooks's, and talked on the Wiseman question. I made my hearers very merry.'

[3] Dec. 10, 1850.

Within little more than a twelvemonth the reproach was removed. On February 16, 1852, Lord Palmerston brought off his 'tit for tat with Johnny Russell.' The Whig Premier resigned, and Lord Derby succeeded in forming an Administration, an undertaking in which he had broken down in the previous February. Lord Lyndhurst's health rendered his return to the Woolsack out of the question, and almost as a matter of course the Seals were offered to Sugden. His acceptance of them was a matter of intense gratification to Lord Derby, whose ranks sorely needed strengthening,[1] and on the evening of February 23 he wrote gleefully to Lyndhurst, 'we are fairly launched. Sugden all right on Chancery Reform.'[2]

Sugden took his seat in the House of Lords on March 4, as Baron St. Leonards of Slaugham. 'No one can blame the appointment,' was Campbell's genial comment.[3] 'Sugden, notwithstanding his disagreeable qualities, has well earned his advancement, and I make no doubt that he will reputably execute the duties of his office. What fun we shall have in the sparring matches between him and Brougham.'

Campbell's estimate fell conspicuously short of the

[1] 'The Whigs tottered on for a year after the rude assault of Cardinal Penruddock, but they were doomed, and the Protectionists were called upon to form an Administration. As they had no one in their ranks who had ever been in office except their chief, who was in the House of Lords, the affair seemed impossible. The attempt, however, could not be avoided. A dozen men without the slightest experience of official life had to be sworn in as Privy Councillors before even they could receive the seals and insignia of their intended offices. On their knees, according to the constitutional custom, a dozen men, all in the act of genuflexion at the same moment, and headed too by one of the most powerful Peers in the country, the Lord of Alnwick Castle himself, humbled themselves before a female sovereign who looked serene and imperturbable before a spectacle never seen before and which in all probability will never be seen again' (*Endymion*, chapter c.).

[2] Sir Theodore Martin's *Life of Lyndhurst*, 446. The allusion must be to the abolition of the Master's office, as to the propriety of which the outgoing Chancellor, Lord Truro, had expressed grave misgiving, much to the dissatisfaction of Lyndhurst (*Law Review*, xvi. 433).

[3] *Life of Lord Campbell*, ii. 301.

general verdict, and on the day when Lord St. Leonards first sat at Lincoln's Inn, the press of barristers and solicitors assembled to do him honour filled the old Hall to its utmost capacity. Nor was the profession disappointed. Long experience had prepared him for every possible complication of facts; his vast memory and piercing intelligence provided him with a solution for every conceivable problem of law. His manner, though dry and disconcerting, was full of judicial dignity. He was patient enough, so long as counsel, whatever their standing, eschewed redundancy and irrelevance. But undoubtedly those fared best before him who recognised the intuitive celerity with which he grasped the real issue,[1] and who indulged in the least superfluous adornment of their cases. He was especially intolerant of those adjournments and postponements which were largely responsible for the block in Chancery. And by his own habit of giving judgment at the conclusion of the argument without delay or 'further consideration,' he did much during his tenure of office to stimulate a healthy flow.

Despatch is not undue haste, he told the members of the Lords Appellate Jurisdiction Committee in 1856; with a knowledge of the law on the part of the judge and undivided attention to the arguments, I believe that, in a great majority of cases, a perfect master of the law may dispose of the greater proportion of them as soon as the arguments are closed.

In the first appeal that came before him in the House of Lords,[2] he construed a most obscurely worded will in an *ex tempore* speech which occupies twenty pages of the printed report. And though the defects of his temper rendered him sometimes a difficult colleague he continued for long years after his retirement from public

[1] 'He could penetrate with a sagacity and an intuition which seemed almost superhuman to the heart of those tangled Chancery suits which had become by growth of years so complicated as to baffle the comprehension of client, solicitor, and counsel alike' (*Blackwood*, lxxxi. 260).

[2] De Beauvoir *v.* De Beauvoir, 3 House of Lords Cases, 524.

life to lend strength to the judicial proceedings of that assembly.

The Cabinet, weak in personnel[1] and weaker still in constructive policy, saw in Law Reform, and especially in the reform of the Court of Chancery, an opportunity for winning popularity and strengthening their tentative foothold. Lord Derby announced in Parliament[2] his intention of introducing measures for simplifying and improving the administration of law and justice, and Mr. Disraeli, when addressing his constituents, had pledged himself and his colleagues to remove for ever 'that old man of the sea that has so long pressed upon the back of the English people.' Nor was there any reason for delay. In December 1850 Lord John Russell had appointed a strong Commission to inquire into the Chancery procedure;[3] their report was ready in January 1852, and before its presentation to Parliament Lord Truro had directed the secretary, Mr. Barker, to prepare a Bill, carrying into effect the recommendations of the Commissioners.

With this Bill the new Ministry at once resolved to proceed, 'putting the sickle,' as Mr. Bethell complained, 'into the field of standing corn which the Liberal Government had brought to maturity.' Whatever use Conservative members seeking re-election may have made of their reforming virtue, Lord St. Leonards never pretended for a moment that the plan of reform contained in the Bill was the work of the new Ministry.

He wished most carefully to guard himself, he said, from the imputation that he was taking credit to himself for those

[1] Palmerston declared that the Government consisted of three men and a half, Lord Derby, the Chancellor, and Disraeli being the three, and Sir John Pakington the half (Lord Stanmore's *Life of Sidney Herbert*, i. 163).

[2] Hansard, cxix. 900.

[3] It consisted of Sir John Romilly, M.R., Vice-Chancellors Turner and Parker, Mr. Richard Bethell, Mr. (afterwards Lord Justice) W. Milbourne James, Sir William Page-Wood, Mr. Justice Crompton, and two laymen, Sir James Graham and Mr. Henley. See *ante*, vol. i. 451.

measures. Though the Government was ready to adopt them, they could not take credit for originating them.

But though the credit of abolishing the Master's office rests with Lord Truro and the Commissioners, the sister measure,[1] for developing the consequential alterations in procedure, was prepared and carried through by St. Leonards himself. And the energy displayed by him was all the more laudable that he had only slowly and reluctantly been converted to the necessity for imposing upon the Equity judges of first instance the task of working out their own decrees;[2] nor could he ever be induced to approve of the *viva voce* examination of witnesses in Chancery proceedings.[3] He maintained that witnesses would only disturb the Court, 'which is always quietly deciding questions of great amount and very often of great importance.'

Though the Common Law Procedure Act[4] was passed during his Chancellorship, it did little more than embody the report of a Commission appointed by Lord Cottenham. But Lord St. Leonards is entitled to the credit of some useful amendments of the lunacy laws,[5] and one measure passed in the teeth of considerable opposition should earn him the unstinted gratitude of generations yet unborn. The Wills Act of 1837, in spite of many beneficent provisions, had bound a fresh burden on the testator. Unless his signature was placed exactly 'at the foot or end of the will,' that instrument was void beyond redemption, and the amount of practical hardship and injustice which had resulted during the previous fourteen years may be imagined.

It was decided that if there was somewhat more room than enough for the signature between the end of the will and the actual signature the will was void, so that, at last, it rather required a carpenter to measure the distance in each case than a judge to decide upon the application of the Act.

[1] 15 & 16 Vict. c. 86.
[2] *Ante*, vol. i. 451.
[3] 15 & 16 Vict. c. 86, secs. 31 and 39.
[4] 15 & 16 Vict. c. 71.
[5] 16 & 17 Vict. c. 70, 96, 97.

The sad result was that this law made hundreds of wills void. They were, when attempted to be proved, carried away in basketfuls as valueless.[1]

By a short Act, Lord St. Leonards now provided that the signature should be good if it was

so placed at, or after, or following, or under, or beside, or opposite to, the end of the will, that it shall appear on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will.[2]

The verbiage, so characteristic of an old conveyancer, has been the source of much innocent merriment, but a reference to any old edition of Jarman will show the importance of providing for every combination of haste, ignorance, and accident. The removal of this blot upon an Act for which he had been at least officially responsible was regarded by Lord Campbell as a personal affront, and his resentment found its channel in his posthumous volume.[3]

Parliament was dissolved in July 1852, and the General Election, while leaving parties not unevenly balanced, put the Conservatives in what may be termed a working minority. An autumn session opened on November 11, on the 16th the Chancellor laid before the House of Lords a budget of projected law reforms; a month later the

[1] *Misrepresentations*, &c., 41.

[2] 15 & 16 Vict. c. 24.

[3] 'When I returned from the Spring Circuit in April I found that the new Chancellor had been setting all the law lords at defiance, and had threatened to repeal a Bill which I had introduced as head of the Real Property Commission to regulate the execution of wills of real and personal property. I was called in by Brougham to assist in repressing the aggression, and we gave our noble and learned friend a lesson which made him comparatively modest and humble during the remainder of his short tenure of office' (Campbell, *Life of Brougham*, 571). In his vindication (*Misrepresentations*, &c., 38–9) Lord St. Leonards tersely remarks that every part of this statement is false. 'I had not set any law lord, much less all of them, at defiance, nor had I threatened to repeal the Act of 1st Victoria, nor did Brougham and Campbell give me any lesson whatever.' It does not appear that Campbell took any part in the debate on Lord St. Leonards' Act. Brougham spoke in favour of it (Hansard, cxx. 8).

ministers were defeated over Disraeli's financial proposals, and promptly resigned. They were succeeded by Lord Aberdeen's coalition of Whigs and Peelites, and there was a strong desire in many quarters to retain St. Leonards at the head of the law and give him the opportunity of applying his long experience and great practical skill as a legislator to the programme he had so recently unfolded. Queen Victoria in particular is said to have desired the continuance of her Chancellor in office; but he was too strong a party man, and the seals were handed to Lord Cranworth.

Lord St. Leonards went back to Boyle Farm to read his Reports and note up his books with all the keenness of a young student, and when in 1857 he published the thirteenth edition of his 'Vendors and Purchasers,' he mentioned in the Preface that every one of the 1,200 new cases cited in it had been read and digested by himself.

> The 1,200 cases astound me, wrote Brougham. I thought I could work a little bit, and poor Wilde used to talk of the hard labour which I called my holidays. But truly you beat us all to nothing.[1]

In the following year appeared the 'Handy Book on Property Law,' already referred to. Fifty years of statutes have done much to impair the practical value of this manual, which compressed within the space of 192 pages the essence of all the property law of England, but it still remains a storehouse of shrewd advice in daily conduct which can never grow antiquated. Take a single passage:

> No hatred is more intense than that which arises in a man's family after his death, where, under his will, the rights of each member of it are not separate and strictly defined; none is more afflicting or degrading to our common nature. We weep over the loss of our relative, and we quarrel over the division of his property. Be careful not to make an unwise or ill-considered disposition, particularly of your residue,

[1] *Misrepresentations, &c.*, 34.

upon which the contest generally arises. As you love your family pity them—throw not the apple of discord among them. If you leave to everyone *separately* what you desire each to have, and give nothing amongst them all which requires division, and therefore selection and choice, peace and goodwill will continue to reign amongst them.

The pages are lightened by many a personal touch, and we are reminded that sons and sons-in-law of the Chancellor were clergymen by the advice given to fathers of young incumbents to furnish their parsonage houses for them and to advance the money to meet their weekly bills until the first instalment of tithe rent charge became payable.

On Lord Derby's resumption of office in 1858 it was taken for granted that St. Leonards would be his Chancellor a second time, and on February 21 he received the formal offer.[1]

I have been called on by the Queen, wrote the Conservative leader, to form an Administration, a task which I have felt it my duty not to decline. My first step towards forming the new Cabinet is to assure myself, of which I trust there is no doubt, of your valuable services in your late office of Lord Chancellor. I do not conceal from myself the difficulties of our position; but I am sure you will feel with me that in the present state of the country it is our duty not to shrink from the responsibility; and I trust that, with God's blessing, we may be able to cope with them.

Within a few hours Lord Derby received his reply from Lord St. Leonards.

I rejoice at the step which you have taken, and you may rely upon any assistance which I can give you. But age forbids me again to occupy the Woolsack. I very much regret that I cannot accept the offer which you made to me, and I feel highly gratified by the continued confidence which you have placed in me.

The same day, however, the Premier-designate made a further appeal.

[1] The late Ministry had been defeated on February 19.

Your note, however friendly in its terms, has caused me more disappointment, and, let me add, more difficulty than any of the crosses I have met with in endeavouring to form a Government; and the more so, as it was wholly unexpected, your health and activity both of mind and body having led me confidently to rely on the renewal of your valuable services. Great lawyers are not to be met with every day; and I should be very sorry to have to appoint a mediocrity as your successor on the Woolsack. I will do what I can, if not to supply your place, at least to meet your wishes; but if, as is not impossible, the withdrawal of your name should cause the failure of my attempt, is it asking too much of your sense of the public interest, and of your kind feeling towards myself, to hope that you will so far modify your present determination as to consent to resume the seals for a few months, so as to enable us, should we last so long, to have the long vacation in which to cast about for a successor to you. The best name that occurs to me is Pemberton Leigh—but I doubt his acceptance. Can you, from your intimate knowledge of the leaders of the profession, suggest any other? Fitzroy Kelly will not do. Let me beg of you an early and a favourable answer. Very much may depend upon it.

Lord St. Leonards, from whose unpublished papers this correspondence has been taken, did not preserve a copy of his reply, but it is clear that he yielded to Lord Derby's importunities; to what extent we can only guess, for events had been moving rapidly, and on the 23rd Lord Derby wrote to him in the following terms:

I am indeed truly grateful for the kind consideration which induces you to make so great a sacrifice of your own wishes and personal comfort rather than cause me any embarrassment. I am, however, happy to say that I shall not find it necessary to call upon you to do so, as on full consideration I have decided, with the Queen's entire approval, to make the offer to Thesiger, by whom it has been at once accepted.[1] It would have been more satisfactory had his

[1] *Infra*, 115. We now know that the offer had first been made to Mr. Pemberton Leigh. See Lord Kingsdown's *Reminiscences*, and *Letters of Queen Victoria*, iii. 344, from which it appears that the authorisation from her Majesty to Lord Derby was given on February 22.

practice been at the Chancery Bar, but we have had some eminent common law Chancellors. And I am sure that whenever you are enabled to attend in the House or whenever he may ask it privately you will be ready to give him the benefit of your great experience and knowledge.

To these letters may fittingly be added one from Sir Frederick Thesiger dated the following day.

My dear Lord St: Leonards,—I am grateful beyond measure at your kind congratulations upon a promotion for which I feel that I am indebted to your self-denying determination. The office was yours, as of right, and I only hope that the public may not have reason to regret that you chose to close a splendid career with the unprecedented course of refusing to take the glittering prize which was offered to your acceptance, and which you have shown that no one was more qualified to possess. I thank you for your kind offer about the appeals in the House of Lords, and it would be affectation not to say that your eminent judicial talents and high legal attainments will make your presence there of great assistance to me and of important advantage to the public.'

This correspondence disposes, I think, of the suggestion of Lord Selborne, who always speaks of St. Leonards with less than his usual equanimity, that the latter only wanted to be pressed, and did not expect to be taken at his word.[1] But the precipitancy with which Lord Derby offered the seals first to Pemberton Leigh and then to Thesiger, without waiting for an answer to his second letter, can only be explained and excused by the urgent necessity for making up a Cabinet before a fresh change had come over the political horizon. The failure to secure the services of Lord St. Leonards caused the greatest surprise and regret to the public, legal and general, and his Lordship records how Brougham laid hold of him by both arms and with tears in his eyes urged him to retract his refusal.

[1] *Memorials, Family and Personal*, ii. 333, and see a letter from Lord St. Leonards quoted in Mr. Nash's *Life of Lord Westbury*, i. 252 in which he refers to his long-formed resolution not to die in harness.

Whether the party managers were equally disappointed may be doubted, for he had been for some time past the despair of the Tory Whips in the House of Lords,[1] and high hopes, not destined to be realised, had been formed of the debating strength of Lord Chelmsford.

St. Leonards' promise of assistance to the new Chancellor over the appeals was amply carried out, and he continued to take regular part in the judicial business of the House of Lords for many years to come. Without accepting Campbell's highly coloured account of the dissensions which had brought discredit upon that august tribunal[2] a few years earlier, it is notorious that the triumvirate, consisting of Cranworth, Brougham, and St. Leonards, into whose hands the business had devolved, had failed to command the confidence of the legal profession, and were the main provocation for the Life Peerages Bill.[3] But with the added strength of Lord Wensleydale, and Lord Kingsdown, and in due course of Lord Westbury, the *Domus procerum* recovered its ancient prestige, and the voice of Lord St. Leonards continued to be regarded in his own province as an almost infallible oracle of law. His final legislative achievement was the Act 22 and 23 Vict. c. 35, which usually bears his name, and which gave a much desired relief to trustees and effected some long-needed amendments in the law of property; but he continued down to a much later period to take part in the deliberations of the Upper House, and when, in 1870, Lord Hatherley introduced the first phantasmal sketch of the Judicature Act the veteran of eighty-eight subjected 'the fusion—or, as he should prefer to call it, the confusion—of law and equity' to a vigorous criticism. He especially objected to the proposed removal of the Law Courts from Westminster.

Until he heard his noble and learned friend (Westbury) enumerate the inconvenience and dangers connected with

[1] *Life of Lord Granville*, i. 169. [2] Campbell, *Life of Brougham*, 578.
[3] *Life of Granville*, i. 171, and *infra*, 73.

the existing system—the want of accommodation, the unwholesome atmosphere and other inconveniences connected with our Courts—he had but a very faint conception of the miseries among which so many years of his life had been passed.[1]

Lord St. Leonards had been always addicted to publishing brochures—now a report of a speech, now an 'open letter' on some topic of the day or recent Act of Parliament. In 1869 the appearance of the posthumous volume of Campbell's 'Chancellors' drew from him a rather pathetic little book of 100 pages, forty of them a mere reprint from Hansard. The tone of studied depreciation in which he found himself referred to, and the sneer with which his name was invariably associated, fell as a most painful surprise upon the old man who had lived for years past on easy and intimate terms with the author. As a literary composition the 'Misrepresentations Corrected' bears unmistakable traces of age, and is deficient both in arrangement and in vigour of statement. But as an exposé of Lord Campbell's methods, and of his views as to the obligations of friendship, it is invaluable.[2]

Lord St. Leonards was last seen at a public function in 1872, when, as High Steward of Thames Ditton, he rode on horseback at the head of a procession to commemorate the freeing of the bridge across the Thames. He had preserved his vigour and vitality to an extraordinary degree, and after he had become a nonagenarian he would vault the gates in his grounds rather than allow the bailiff to open them for him. He died at Boyle Farm on January 29, 1875, within a few weeks of completing his ninety-third year, 'the Nestor of the profession,' to use

[1] Hansard, clxxviii. 1181.

[2] The opening sentence contains a version of a famous story which differs from the one contained in my former volume (155 *n.*): 'When after a social dinner at which I was present Sir Charles Wetherell, with much humour, sketched the characters of several of the guests he thus addressed Lord Campbell, "Then there is my noble and biographical friend who has added a new terror to death."'

the happy phrase of Sir Alexander Cockburn, 'who has done more to teach the law and improve the law than any man of the age.' [1]

In Lord St. Leonards' 'Handy Book' he had written that 'to put off making your will until the hand of death is upon you evinces either cowardice or a shameful neglect of your temporal concerns.' And it was well known in the family circle and among his friends [2] that his Lordship had devoted all his conveyancing precision to the preparation of testamentary disposition which should do even justice among his numerous children and grandchildren. His will, executed in 1870, was kept by the testator, together with several codicils, in a tin box in a room on the ground floor of his country house as late as August 20, 1873. On that date a final codicil (the eighth) was placed in the box, and shortly afterwards Miss Charlotte Sugden, his only unmarried daughter and his constant companion,[3] removed it, for better security, to her bedroom. Immediately on the death of the old peer the box was opened by Miss Sugden, as executrix, in the presence of her only surviving brother and a brother-in-law, Mr. John Reilly. There were the eight codicils safe enough, but the will had disappeared, and no search was ever able to discover it.

The will had been holograph, and, after her father's invariable custom, written without any preliminary draft. The only person who could speak to its contents was Miss Sugden. She had been in her father's company while he was making it, he had read it over to her, and when engaged upon the preparation of the codicils he was in the habit of making her refer to the will for the particulars which he wanted. In this way she had read the will through from end to end no less than three times. In the first moment of consternation she vowed that the contents were perfectly fresh in her memory, and

[1] *Our Judicial System* (1870), p. 6.
[2] *E.g.* Mr. Samuel Warren, Q.C. *Annual Register*, 1875, 187.
[3] Lady St. Leonards had died in May 1861.

at the suggestion of her solicitor she proceeded to write out in plain unartificial language, and without referring to the codicils and other testamentary papers in the box, the substance of her father's intentions as she had seen them embodied in the missing will.

This statement, reduced into technical phraseology, was propounded for probate, together with the codicils, but this action on the part of the executors was opposed by the testator's grandson, the second Lord St. Leonards. For reasons into which it is unnecessary to enter, but which Lord Hannen emphatically declared were such as in no degree to reflect upon the younger man's character, the first Lord St. Leonards had been gravely displeased, during the last years of his life, with his successor in the title. On the other hand he had shown a marked desire to make better provision for the Rev. Frank Sugden, the only survivor of his three sons, and for his daughter Charlotte, the prop and solace of his old age, to whose unremitting care he made frequent and pathetic reference during his long illness. The effect of the codicils was to reduce very materially the interest in his grandfather's estate to which the new peer would have been entitled under the will had it stood alone, and if the reconstituted will were admitted to probate at all, it necessarily carried with it those latter instruments. If rejected, they fell with it, and there being no prior will in existence, intestacy resulted, which, as the bulk of Lord St. Leonards' property was real estate, would be largely to the benefit of the heir.

Even without the opposition it was highly doubtful whether the Court would grant probate in such circumstances. Some of the ablest members of the Common Law Bar, and that great Real Property lawyer, the late Mr. Joshua Williams, were convinced that it was hopeless to expect it to do so; and the heads of a compromise, to be embodied in a private Act of Parliament, were being drawn up when an old member of the Doctors' Commons Bar, who had practised in the Probate Court since the disestablishment of Spenlow and Jorkins, advised

that at least an effort should be made. He was convinced that the Court would hold that the contents of a lost will, like that of any other lost instrument, might be proved by secondary evidence.[1] His opinion was followed; and it was upheld by Lord (then Sir James) Hannen, who tried the case without a jury on November 17, 1875.[2] But then came the questions of fact. What were the contents of the lost will, which, it was admitted, had been duly executed and attested on January 13, 1870; and was the will lost, or destroyed by the testator *animo revocandi*?

The presumption against even a trained lawyer being able accurately to recollect and repeat the substance of a complicated will containing all the conditions and provisions customary in settlements of real estate was almost insuperable. And the danger of admitting evidence derived from the recollection of a single witness was enhanced by the fact that the witness herself was deeply interested in establishing the will in the form in which she alleged it to have existed. In the event of an intestacy, Miss Sugden would have lost all the special provision which it had been her father's object to make for her.

As to her absolute integrity there was no question; the opposing counsel laid as much stress upon it as did her own, and with regard to the accuracy of her memory, it was insisted that she occupied a wholly exceptional position. She had devoted her life to a great lawyer who had literally lived in the law. She had acted as his amanuensis in the countless editions of his legal treatises, she had corrected the proofs, and it had been his habit to explain to her the various points of law as they arose. When Lord St. Leonards was engaged upon his 'Handy Book' he had treated her as a *corpus vile* to test his success in making complicated and technical matters clear and plain. 'Charlotte, you deserve silk,' he would say with paternal pride when she exhibited mastery over some especially knotty point.

[1] See Brown *v.* Brown, 3; Ellis and Blackburn, 876.
[2] L.R. 1, P.D. 154.

Miss Sugden's remarkable display in the witness-box, aided by a minute examination of the wording of the codicils and the co-ordination of some parole evidence, prevailed with the judge, who decreed that the contents of the will of 1870 were, with a single exception, what Miss Sugden had represented them to be. And he pronounced emphatically against the contention that the will had been revoked by the testator At the same time he carefully refrained from putting forward any theory to account for its disappearance. The Lord Chief Justice, Sir Alexander Cockburn, in the Court of Appeal, whither the case was unsuccessfully taken by Lord St. Leonards, was less reticent.[1]

The only conclusion I can arrive at, he said, is not that the testator destroyed it, but that it was clandestinely got at by somebody, and surreptitiously taken away; who that somebody is, is one of those mysteries which time may possibly solve; but which at present it would defy human ingenuity to say.

Human ingenuity has been content to leave the riddle where Sir Alexander found it, but I have good authority for saying that there is really very little doubt about the matter. The will is believed to have been abstracted from the tin box in which it was kept in the saloon on the ground floor by a servant who was anxious to see what legacies, if any, it contained for the domestics. Though the tin box was placed in a locked escritoire, the room was accessible to anyone in the house, and it was proved that there were no fewer than five keys by which the escritoire could be opened. When the box was suddenly removed to Miss Sugden's bedroom the possibility of restoring the will was gone, and it seemed safer to the culprit to destroy it. For the unjust suspicions which rested on a member of the deceased peer's family there is not the smallest foundation, as the perusal of the evidence at the trial will show.

[1] L.R. 1, P.D. 220.

CHAPTER III

LIFE OF LORD CRANWORTH

1790–1868

Abinger Hall, December 26, 1852.—The new Ministry is formed, and Cranworth is Chancellor. His life must some day be written, and I should delight to do justice to his unsullied honour, his warmth of heart, his instinctive rectitude of feeling, his legal acquirements, his patient industry, and his devoted desire to do his duty.[1]

It was not often that Lord Campbell permitted himself to speak thus, either of the quick or of the dead, but this passage in his diary is only one of many proofs which testify to the extraordinary hold obtained by Lord Cranworth upon the affection of his contemporaries. His career is strangely deficient in incident, it contains little to fire the imagination of the neophyte; but, like the books of the Apocrypha, it may be studied very profitably for example of life and instruction of manners.

Robert Monsey Rolfe was born December 18, 1790, at Cranworth near Thetford. His father held the perpetual curacy of Cranworth in conjunction with the rectory of Cockley Clay, near Swaffham, and his grandfather, great-grandfather, and one of his uncles were also in Holy Orders. On the paternal side he was closely connected with Admiral Lord Nelson, and his grandmother, Miss Jemima Alexander, was the daughter of the 'lettered but morose hermit' of Chelsea College, Messenger Monsey.[2]

In common with the young East Anglians of the day, he received his early education at the flourishing grammar

[1] *Life of Lord Campbell*, ii. 312. [2] *Dict. Nat. Biog.* xxxviii. 193.

school of Bury St. Edmunds, where Charles James Blomfield, afterwards Bishop of London, was among his fellow pupils, and in 1803 he was transferred as a Commoner to Winchester, the first association of that historic foundation with one of the Victorian Chancellors. The Long Rolls record the steady upward progress of his name; in due course he became a Prefect, and in 1807 he won the silver medal for a Latin speech. Campbell, who never quite accustomed himself to the products of the English public schools, professed an especial kindness for the memory of William of Wykeham for having produced such 'Wickhamists (sic) as my friends Baron Rolfe and Professor Empson.'[1]

In 1808 Rolfe entered at Trinity College, Cambridge, where he graduated seventeenth wrangler in 1812, and two years later he gained one of the Members' Prizes for senior Bachelors, awarded for a Latin Prose Dissertation. A fellowship at Downing had recently been vacated by the untimely death of Charles Skinner Matthews,[2] the friend and Admirable Crichton of Byron, and the uncle of Viscount Llandaff; and to this Mr. Rolfe was duly elected.

Viewed as a university distinction, this achievement was of small account beside the glories of the high table at Trinity and St. John's, but the Downing Fellowships possessed the recommendation of being free from clerical restrictions, and they were specially intended for graduates engaged in the study and practice of law and medicine. On January 29, 1812, Rolfe was admitted at Lincoln's Inn, and he was called to the Bar on May 21, 1816. In whose chambers he read, and who were the associates of his student days, I have been unable to ascertain, but on his call he at once attached himself

[1] *Lives of the Chancellors*, i. 258 *n*. This strange collocation of names reminds me of the cryptic and variously reported saying of Baron Martin that the three ablest men in history were 'the Lord Chief Baron, the Apostle St. Paul, and Simpson of the Northern Circuit.'

[2] Drowned in the Cam, August 11, 1811. See note to *Childe Harold*, canto i. stanza xci.

to the Equity Courts, and also, emboldened by family connection, joined the Norfolk Circuit, now partitioned[1] between the Midland and the South-Eastern, but which then bore the reputation of being especially friendly to local talent.

In Crabb Robinson's Diary for the summer of 1816 occurs the following entry:

> Our new junior, Mr. Rolfe, made his appearance. His manners are genteel; his conversation easy and sensible. He is a very acceptable companion, but I fear a dangerous rival.

And the author said prophetically to his brother,

> I will venture to predict that you will live to see that young man attain a higher rank than any you ever saw upon the circuit.[2]

The diarist's perspicacity was not generally shared. Away from his native soil, where solicitors from the beginning were kind to him, Rolfe was a long time in attracting briefs, but slowly and surely his quiet practical ability, united to a fund of sound and explicit common sense, made itself felt. On one of his earliest circuits, Henry Cooper, whose lack of judgment was as conspicuous as his rollicking humour,[3] was reducing the whole Court to paroxysms of laughter, much to the disregard of his client's interests. Rolfe whispered to Crabb Robinson, 'How clever that is: how I thank God I am not so clever.' On another occasion a member of the Bar was enunciating the Blackstonian maxim that Christianity is part and parcel of the law of the land: 'Were you ever employed,' said Rolfe to a companion,

[1] By order of Council, Feb. 5, 1876.

[2] *Diary of Henry Crabb Robinson*, ii. 41. A few pages later Robinson gives us a glimpse of the future Lord Chancellor filling the inside of the Bury coach with a whist party, a breach of circuit etiquette which, I trust, was duly liquidated.

[3] It was Cooper who once drew a smile down the iron cheek of Lord Ellenborough. His client was labouring under the imputation of intemperance: 'Everyone gets drunk,' said Cooper to the jury, and then, with a bow to the Bench, 'except of course their Lordships and the Bishops.'

'to draw an indictment against a man for not loving his neighbour as himself?'

For advocacy he never at any time displayed an aptitude, but he acquired a reputation as a steady, safe counsel, with a good knowledge of law, great quickness of apprehension, and an infinite capacity for taking pains. He succeeded in amassing a good junior business in Chancery, while his appointment as Recorder of Bury St. Edmunds kept him in touch with the circuit. By the spring of 1831 he had acquired sufficient standing to permit of his contesting Bury as a Whig, but the Bristol interest, which even in these latter days was strong enough to stem the flowing tide of 1906, proved too powerful for him. He was more successful, however, in the following December, when at the first election after the Reform Bill he was returned for Penryn and Falmouth, a constituency which remained faithful during the seven years of his Parliamentary life.

Rolfe was not destined to cut a conspicuous figure in the House of Commons. Nature had not intended him either for the hustings or for the rough and tumble of debate. Somewhat unready of speech in emergencies, his exterior was unimpressive. Rather under the middle height, feebly made, with a pale complexion as if the atmosphere of Westminster Hall had taken the blood out of his cheeks, a slightly angular and prominent nose, and light grey amiable eyes, his chief physical characteristic was the smile which never left his face, and was, for once, the faithful index of a kind heart and generous disposition.[1] He had received a silk gown in the summer of 1832, and been made a bencher of his Inn in the following November; but the promotion to the *rôle* of leader had been disastrous to his practice, and it was with something akin to amazement that in

[1] 'His principal redeeming quality as a speaker is his self-complacent, ever-smiling countenance; nobody ever saw him wear a grave face; in the midst of undertakers he would be proof against the infection.'—*The Bench and the Bar*, by James Grant.

September 1834 the public learnt of his appointment to succeed Sir Charles Pepys as Solicitor-General.

The distribution of legal patronage at that epoch was largely influenced by a sort of triangular duel, which was raging between Brougham, Melbourne, and Sir John Campbell, the Attorney-General. Campbell had just been baulked of the Mastership of the Rolls,[1] and was resolved at any rate to have a voice in the selection of his subordinate. Wilde had no seat in the House of Commons,[2] and Charles Austin, who suffered from a similar disqualification, was unwilling to sacrifice his enormous practice at the Parliamentary Bar.

> I was for Rolfe, says Campbell, naïvely, and luckily for me I carried him through, for I afterwards acted with him for five years most harmoniously, and always received from him most effectual assistance.[3]

The appointment brought no discredit on its authors; Lord Melbourne had wished for a sound and safe man, and he got one most emphatically.[4] Campbell was fully equal to the senatorial duties of a law officer, and Rolfe's industry and acumen were invaluable in that part of the work where men of much more showy qualifications have been known to fail. Moreover the fact that his private practice had declined steadily since his elevation to the rank of K.C. left him an amount of leisure for Government business which was unattainable in one so preoccupied as Serjeant Wilde.[5]

The Attorney-General alludes to Rolfe's assiduity in answering cases,[6] and their joint opinions given during the Canadian troubles of 1837–39, which have been

[1] *Vide ante*, vol. i. 392, and *infra*, 157. [2] *Ante*, vol. i. 433.

[3] *Life of Lord Campbell*, ii. 53.

[4] The downfall of Melbourne's Administration in November caused Rolfe's resignation before he had received the honour of knighthood; the omission was not repaired until May 6 in the following year, when the Whigs had come home again, bringing their sheaves with them.

[5] Rolfe was said to be making a bare 500*l.* a year when he was made Solicitor-General.

[6] *Life of Lord Campbell*, ii. 125.

recently published,[1] betray the touch of a cautious, a conscientious, and a somewhat plodding spirit. Nor was he to be despised in the conduct of a case in Court. He may have been deficient in vigour and in the tricks of the trade; his sentences may have been faulty and inelegant, and his unpretentious periods may have conduced to slumber. But he excelled in seizing upon the subordinate features of a case and in putting them clearly and forcibly before a jury. Little circumstances, which would escape an industry less minute, were carefully noted and marshalled with due effect, and he was ever alert in detecting and allaying the hostile prepossessions of the good men and true in the box.

Prosecuting for the Crown in a revenue case, where the principal witness was a King's evidence man, whose character had been cut to ribands in cross-examination, Rolfe made no attempt to rehabilitate a scoundrel who had laid the information against his old accomplices. But he laid stress on a series of insignificant and seemingly irrelevant facts, in every one of which the witness was corroborated by the log-book of the sea captain who had brought the smuggled tobacco over from Ireland.

I put it to you, he said, as honest and intelligent men, whether, when you see that every word the witness has spoken on all other points has been so completely circumstantiated, you can doubt his evidence given on oath on the only remaining point necessary to establish the case.

This was a totally new light to the jury, who had been carried away by the cross-examination, and without hesitation they returned a verdict for the Crown.

But in the House of Commons the Solicitor-General remained, as he had begun, entirely ineffective. The Government never dreamt of utilising him in the day of battle, and a scoffing critic alludes to

the manorial right of modesty which is the monopoly of Sir Monsey Rolfe—that public man on the *lucus a non lucendo*

[1] *State Trials*, N.S. iii. 1347, 1355; *Life of Lord Campbell*, ii. 119.

principle, that shadowy entity which all have heard of, few seen—an individual, it would appear, of a rare humility and admirable patience, and born, as it were, to exemplify the beauty of resignation.[1]

This virtue, however, was not put to the test until October 1839, when, after nearly five years of office, Sir Monsey was made a Baron of the Exchequer *vice* Maule transferred to the Court of Common Pleas. For a law officer to accept a puisne judgeship was unusual, but there were modern precedents in the persons of Garrow and Vicary Gibbs, to say nothing of the recent fiasco of Sir William Horne.[2] Even Sir John Campbell was very nearly persuaded into accepting this identical piece of preferment, and he strongly applauded Rolfe's decision.[3] Dark clouds were gathering over the Treasury Bench. The Solicitor-General had no private practice, and, as his colleague puts it, 'his situation at the Bar would not have been very comfortable had he lost his official rank. And,' adds the same authority, 'his seat in Parliament, by no means a secure one, required certain compliance which the Reform Bill was for ever to do away with.' A very pregnant observation!

Baron Rolfe wrote in self-depreciatory terms to Lord Chief Justice Campbell many years afterwards:[4] 'When I first came on the Bench I was entirely ignorant of the practice, but somehow one picks it up, and no real difficulties occur.' His duties as Solicitor-General had brought him pretty frequently into the Court of Exchequer, and his old experience on the Norfolk Circuit had versed him in the Nisi Prius business. Moreover, as Recorder of Bury St. Edmunds he had acquired a familiarity with criminal work which saved him from the traps that beset some of the equity judges turned loose on the common law side in the days immediately succeeding the Judicature Act. He possessed in a very marked

[1] *Letters of Runnymede*, 13.
[2] *Ante*, vol. i. 316, 391.
[3] *Life of Lord Campbell*, ii. 125.
[4] *Ibid.* ii. 263.

degree the qualities which contributed to judicial excellence—firmness, soberness, patience, and dignity. He had a wide and exact knowledge of legal decisions, and he was keenly apprehensive of the value and weight of scattered pieces of evidence. And though his manner on the Bench was ever kind and courteous, and his face ever beaming, he pushed decorum to the verge of dulness; he had, as it was remarked, no jocose habits to unlearn, and he was prompt in repressing any symptoms of fancy or liveliness in others.

Rolfe sat in the Exchequer for over ten years. At the date of his appointment Lord Abinger presided over the Court, being succeeded by Sir Frederick Pollock in 1844. The puisnes during this period were, for the most part, learned and somewhat masterful men. The current professional view was embodied in the saying:

> Parke settles the law, Rolfe settles the facts, Alderson settles the counsel, the Chief Baron settles everything but the case, Platt settles himself.

The opportunities, however, offered by the Exchequer for acquiring a legal reputation were not great, and its equitable jurisdiction, when Rolfe's experience would have stood him in good stead, was removed in 1841. He was associated with Lord Abinger and 'Johnny' Williams in the trial of John William Bean, a half-crazy boy, who shot at Queen Victoria in August 1842. In March of the following year he presided at the prosecution of Feargus O'Connor and a batch of sixty Chartists.[1] In the spring of 1842 he tried a very remarkable case at York Assizes, in which the main incident of Eugene Aram's story was strangely repeated. The discovery of a human skeleton in the bank of a Yorkshire beck led to the arrest of a Barnsley weaver on the charge of murder a dozen years earlier. It was a case of strong, but not overwhelming, suspicion, and the prisoner largely owed his acquittal to the carelessness of an official who had lost a

[1] *State Trials*, N.S. iv. 1382.

fragment of the remains upon which the prosecution chiefly relied for the identification of the body with that of a certain William Huntley, who had disappeared from human ken in July 1830.[1]

But the case with which the name of Rolfe is imperishably associated is the murder of Isaac Jermy by James Blomfield Rush. Mr. Jermy, whose original name had been Preston, was a well-known member of the Norfolk Circuit, which he had joined a year or two earlier than the Baron; he was Recorder of Norwich, and had succeeded in 1837 to the family property of Stanfield Hall, near Wymondham. It was an equivocal heritage, for his right to possession was disputed by more than one set of claimants, and a rabble from the neighbourhood actually took forcible possession of the Hall, from which they had to be removed by the military. A prominent part in the expulsion of the rioters was played by Rush, who held a couple of farms from Mr. Jermy, and at one time acted as his bailiff. Gradually, however, he sank into pecuniary difficulties, and suffered a distress at the hands of his landlord, to whom he was also deeply indebted over money advanced on mortgage.

On the evening of November 28, 1848, Mr. Jermy, who lived at the Hall with his son and daughter-in-law, was shot dead just outside his porch by a man wrapped in a cloak and wearing a mask. The murderer darted into the house, with the arrangement of which he appeared well acquainted, and proceeded to discharge a second barrel, with fatal consequences, into the body of Mr. Jermy, junior, and to inflict dangerous wounds upon his wife and upon the housemaid. The masked figure then disappeared, but not before it had been seen by some of the other indoor servants.

Suspicion at once attached itself to Rush, who had made no secret of his vindictive feelings towards the

[1] Reg. *v.* Goldborough. The trial is described at length and with much ingenuity by Samuel Warren, *Miscellanies, Legal and Literary*, i. 185.

Jermys, and whom the terrified domestics declared that they had recognised beneath the cloak and mask. He was arrested in his home at Potash Farm, which stands within a mile of the Hall and communicates with it by a pathway across some fields. In a large cupboard in the bedroom were found a mask and cloak, together with another disguise, a widow's dress, made exactly to fit his figure. The only other inmate of the farm was a young woman named Emily Sandford, who was living as Rush's mistress, Rush himself being a widower with nine children, most of them grown up. Her examination not only threw a flood of light upon the movements of the prisoner on the night of the murder, but suggested an intelligible motive for the perpetration of the crime. It appeared from her statements that Rush had forged the signature of Mr. Isaac Jermy to certain documents, which purported to let to him Potash and another farm on exceedingly favourable terms, and to cancel the mortgage deeds. The forgeries would never have stood the scrutiny to which they must have been subjected, but Rush probably imagined that if Mr. Jermy and his son were both removed, it would be impossible to impugn the genuineness of the signatures, to which he had induced Emily Sandford to affix her name as a witness.

The trial took place at Norwich on March 29, and the five following days. Serjeant Byles led for the prosecution, and the prisoner defended himself. East Anglia has an evil reputation for cold-blooded atrocities, but the wholesale nature of the butchery, and the effrontery with which a single man had 'held up' the household—to say nothing of the station of the victims—caused the most intense excitement.

From the beginning the result was a foregone conclusion, and the main interest centred in the extraordinary effrontery of the prisoner and his determined efforts to browbeat witness, counsel, and the judge himself. His energy was directed most fiercely against Emily Sandford, whom he kept under cross-examination for the whole of

one day and the part of another. His tone, half bullying and half entreating, the brutality with which he made her confess to the odious details of their intimacy, his protestations of undying affection towards her, and his constant appeals to the Almighty, produced a feeling of repulsion among the audience such as is seldom aroused by the most abandoned criminals.

For the victim much sympathy was felt. She was a girl of prepossessing appearance and respectable family, whom he had enticed into his establishment as a governess, and had then seduced under promise of marriage. One of her answers made a profound impression in Court:

> I told you, she wailed to the prisoner, when you broke your promise, that you would repent before you died of not making me your lawful wife before our first child was born.

Had the seducer been true to his word, she would not have been admissible as a witness, and without her the chain of evidence fell short of the precision required by law. It is more than probable that Rush would have escaped, had her lips been sealed and had he consented to be defended by counsel.

Rush enjoyed a double portion of that latitude which is always afforded to litigants who decide to dispense with the assistance of the Bar; and, deceived by Rolfe's gentle manner, he tried to adopt towards him the same hectoring manner with which he treated the unhappy Emily Sandford. A more irascible, a 'stronger' judge, would have played into his hands by losing his temper. Rolfe never deviated from his usual serene courtesy and dignity. He contented himself with occasionally checking the prisoner's divagations, listened patiently to his interruptions, and left not a loophole for complaint that the defence had been interfered with. His summing up was short and deadly, the jury were not away ten minutes before they returned with a verdict of guilty. Rush was hanged outside Norwich Castle, one of the most deliberate,

dogged, and abhorrent ruffians who had ever perished on an English scaffold.[1]

The trial, so long as it lasted, was the most absorbing topic of the day, and the behaviour of the judge was the subject of universal approval. For the first time in his life Rolfe tasted the sweets of fame and popularity, and his fortunes, which had been somewhat stagnant since his elevation to the Solicitor-Generalship fifteen years earlier, were now to undergo a sudden change. The resignation of Lord Cottenham in May 1850 plunged the Government into serious difficulties as to the disposition of the Great Seal, and Rolfe was created one of the Lords Commissioners with Lord Langdale and Vice-Chancellor Shadwell. When the experiment broke down in the course of a few weeks, his name was freely mentioned in connection with the Woolsack. The Ministry were told that they would do themselves great credit by the appointment of Baron Rolfe as Chancellor.

Nothing could excuse or would excuse them for making any other appointment. To pass by such a man would be reprobated alike by lawyer and suitor and by every person capable of forming a judgment on the subject.[2]

[1] Rush ruined his slender chances of acquittal by the folly of his defence. The sole point in his favour, the failure after prolonged search to find the weapon with which the crime was accomplished, he wholly omitted to touch on. This implement, a double-barrelled carabine pistol with a trigger bayonet, was found eventually in a dung heap, and is now in the possession of the owner of Stanfield Hall; I saw it only the other day. Rush seems to have anticipated an acquittal up to the very last; his coolness and self-possession are sufficiently displayed in the following letter despatched by him to the landlord of the Bell Inn on the third day of the trial.

'You will oblige me by sending my breakfast this morning and my dinner about the time your family have theirs; send anything you like except *beef*; and I shall like cold meat as well as hot, and meal bread; and the tea in a pint mug—if with a cover on the better. I will trouble you to provide for me now, if you please, until after my trial, and if you could get a small sucking pig in the market to-day, and roast for me on Monday, I should like that cold as well as hot after Monday, and it would always be in readiness for me. Have the pig cooked as you usually have, and send plenty of plum sauce with it.'

[2] *Law Magazine*, xliv. 141.

Eventually Sir Thomas Wilde was appointed, but Rolfe had emerged from the obscurity of a puisne judgeship, and was now a personage to be reckoned with. The Bill for the creation of the Lords Justices was already in contemplation, and one of these appointments was destined for him. But there were objections to the promotion of a common law judge to appellate jurisdiction in equity, and the vacancy caused by the death of Sir Lancelot Shadwell on August 10, 1850, was filled by the transference of Baron Rolfe from the Exchequer to the Vice-Chancellor's Court. As an earnest of the future and possibly as a *solatium* for the past, he was created a peer, an unprecedented, and as many thought an unwarranted, distinction. When in doubt as to a title, it was suggested by some waggish friends that he should assume the style and cognisance of Lord Killrush, but it was as Baron Cranworth of Cranworth in the County of Norfolk that he took his seat on December 20, 1850. His great personal popularity disarmed all jealousy or cavilling. During the most heated Parliamentary sessions he had never made an enemy; he was equally acceptable to the Bar and to the Bench; Lord Denman vowed that he would make 'a very nice little peer,' and Greville, who was generally alive to the deficiencies of lawyers, has paid him a remarkable compliment:

> Nobody is so agreeable as Rolfe; a clear head, vivacity, information, an extraordinary pleasantness of manner without being soft or affected, extreme good humour, cheerfulness and tact make his society on the whole as attractive as that of anybody I have ever met.[1]

It may be added that his social attractiveness had been enhanced by his marriage, somewhat late in life,[2] with the daughter of Thomas Carr, Esquire, Solicitor to

[1] *Memoirs*, 2nd series, ii. 263.

[2] October 9, 1845. Lady Cranworth's sisters were married to Dr. Lushington and to Sir Culling Eardley (uncle of the Right Hon. Hugh C. E. Childers), once famous as the Protestant champion who espoused the cause of the notorious Achilli.

the Excise, a well-known figure in literary and general company.

The Court of Appeal in Chancery created by 14 and 15 Victoria, c. 83, began its sittings after the Long Vacation of 1851, and Lord Cranworth and Sir James Lewis Knight Bruce were the first Lords Justices. It seemed that now, at any rate, Cranworth had fulfilled his destiny; here, as in the Court below, he made an excellent judge,[1] rapidly assimilating the new practice and the new decisions which had come into existence during the years spent by him on the bench of the Exchequer.

Some men are born to greatness, upon others it is thrust. Lord Derby's Cabinet fell in December 1852, and, after much searching of hearts, the Coalition Government of Lord Aberdeen was formed in its stead. The Peelites were accused of arrogating a number of posts out of all proportion to their strength relative or positive, but there were no Peelite lawyers, and the Chancellorship was graciously surrendered to the Whigs, who nominated Lord Cranworth.

He received the Great Seal on December 28, and took his seat on the Woolsack as Speaker of the House of Lords on February 10, 1853. His promotion was universally applauded, and he had gained greatly in reputation during his short apprenticeship as Vice-Chancellor and Lord Justice.[2] Thoroughly experienced in the administration of both branches of English jurisprudence, his decisions in Chancery rank very high among lawyers, and his judgments are conspicuous for

[1] See particularly *Law Magazine*, xlvi. 273.

[2] It was alleged against him that, when sitting in the Exchequer he was too apt to be swayed by the technicalities of Parke, afterwards Lord Wensleydale, the 'Baron Surrebutter of the "Pleaders' Guide."' One of his rare detractors, in a letter to Lord Bramwell (*Temple Bar*, cviii. 497), says, 'The case of Ellen *v.* Top (6 Exch. 424) is the triumph of law above common sense. Rolfe, *cujus in corpore pusillo mens est magis pusilla*, turned right round and adopted Parke's view. . . . When Parke cited the case to Baron Martin, who succeeded Rolfe, the canny Yorkshireman is reported to have answered, "Pooh, nonsense."'

LORD CRANWORTH

From the picture by George Richmond, R.A., in the National Portrait Gallery

their precision and clearness of language. His manner on the Bench was considered to fall not far short of perfection.

In his earlier days he made comparatively small use of the relief afforded by the recent Act which rendered the presence of the Chancellor in the Court of Appeal unnecessary. And the fact that he was to be found almost daily by the side of Knight Bruce and Turner, L.L.J., was the source of some little gossip at the Bar.

One day, writes Mr. Nash,[1] some one remarked to Bethell, 'I wonder why old Cranny always sits with the Lords Justices.' The caustic but humorous reply was, 'I take it to arise from a childish indisposition to be left alone in the dark.'

Like many other of Bethell's hard sayings, the humour is more apparent than the justice. Cranworth had already sat for two years as a Judge in Chancery; he had little to learn by this time as regards procedure, and it is much more probable that his object was either to settle the new practice[2] or to moderate what Bethell himself in another caustic phrase styled the 'prurient loquacity of one of the learned Lords Justices and the inveterate technicality of the other.'[3] One forgotten

[1] *Life of Lord Westbury*, i. 159.

[2] Under the Act of 1852 (15 & 16 Vict. c. 86) printed bills took the place of engrossments on parchment; bills of review and amendment were superseded by simple amendment of the original bill; every bill was to contain a concise narrative of the material facts without interrogatories, and oral evidence was made permissible. To think that it should have taken nearly forty years to make such progress!

[3] It is hardly necessary to say that loquacity, prurient or otherwise, was not a characteristic of Lord Justice Turner, so that cap must be fitted on Knight Bruce. At the risk of being charged with irrelevancy I am fain to rescue from oblivion the following story of that vigorous humorist. There appeared before him one day when sitting as Vice-Chancellor a very youthful counsel with a half-guinea 'motion of course,' the object of which was a commission to examine witnesses. The word commission was written in the usual legal contraction, 'commõn,' and the fledgling had not mastered the technicality. 'If your Honour pleases,' he began, 'in the suit of A. *v.* B. I am instructed to move for a common to examine witnesses.' 'For a what, sir?' said Knight Bruce. 'For a common to examine witnesses.' 'Are your witnesses numerous?' 'I am not instructed as to that,

boon the Chancery Bar owe to him. It was on his initiative that the Lords Justices were removed from an upper chamber in the House of Lords to the old hall at Lincoln's Inn, and the pilgrimage to Westminster was spared the denizens of Old Square and Stone Buildings.

Owing to causes which have already been referred to, and to which it will again be necessary to recur, his judicial career in the House of Lords was not an unqualified success. The best known of his judgments is that delivered in the Bridgwater Peerage case, Egerton against Earl Brownlow and others.[1] The bill filed in Chancery, by which the future Earl of Ellesmere sought to escape the forfeiture involved in the onerous conditions of the Duke of Bridgwater's will, had been dismissed by Cranworth sitting as Vice-Chancellor.[2] He had been frankly told by counsel that their only object was to get a decision, one way or the other, which could be carried to that ultimate tribunal over which, by the operation of time and chance, his Honour was found presiding when the case was heard there three years later. The Chancellor saw no reason for changing his view that the proviso requiring the former owner of the Bridgwater estates[3] to secure the title of Marquess or Duke of Bridgwater was strictly legal, but he gladly bowed to the opposite opinion expressed by Lords Lyndhurst, Brougham, Truro, and St. Leonards. And he avowed his pleasure that the testator had been thwarted in his attempt 'to puzzle mankind and interfere with the ordinary enjoyments of property by contrivances and provisions out of the ordinary course of limitation.'[4] It must have been some solace to him as a lawyer, that nine out of the eleven judges who had been called in to advise their lordships had supported his original contention.

your Honour, but probably they may be.' 'Then,' thundered the Vice-Chancellor, 'take Stonehenge.'

[1] *Ante*, vol. i. 158 *n*.

[2] i. Sim. N.S. 464.

[3] Lord Alford, who had died on January 13, 1851.

[4] iv. House of Lords cases, 255.

He made a courteous, dignified, and impartial Speaker of the House of Lords, but long absence from Parliament had not rendered him any more effective in debate than when he quitted the Commons. As a promoter of legislation he has suffered undue depreciation. The charge that he 'generally succeeded in botching other people's endeavours' is based mainly on the fact that his proposals were apt to run counter to those of Bethell, and Bethell was not the man to brook interference or admit his own fallibility. Lord Cranworth is entitled to share with Bethell the credit for that movement which led to the series of Statute Law Revision Acts, and has gradually swept away so much of the lumber of centuries. He carried a valuable Act for the better administration of charitable trusts,[1] and it was largely through his pertinacity that the ticket-of-leave system was adopted in 1853, and that penal servitude was substituted for transportation.[2] The Act which bears his name,[3] and was passed after he had ceased to be Chancellor, aspired to abolish the surplusage of conveyancing by omitting and taking as implied in assignments of property and in wills a vast number of powers, provisos and covenants. Unfortunately, his constitutional timidity induced him to render its adoption optional instead of compulsory, and the intolerable verbosity of legal instruments was maintained in riotous profusion until the Conveyancing Act of 1881.[4]

None the less his performances fell notably short of his undertakings on assuming office. Such reputation as the Conservatives had acquired during the short administration of Lord Derby came from the vigour displayed in law reform by Lord St. Leonards, and his successor was over-bold in promising to rival him. The

[1] 16 & 17 Vict. c. 137.

[2] 16 & 17 Vict. c. 99. The Act did not forbid transportation, it only exempted certain colonies from being the dumping grounds for criminals; convicts continued to be transported to Western Australia until 1868.

[3] 23 & 24 Vict. c. 145.

[4] 44 & 45 Vict. c. 41.

fate of his early efforts in the direction of reforming the procedure in Probate and Divorce was a rough lesson.

The jurisdiction of the Ecclesiastical Courts in testamentary matters was a survival of pre-Reformation days, against which Lord Lyndhurst, Lord Brougham, and Lord Cottenham had all striven in vain. The majority of the Law Commissioners had reported in favour of a Probate Court such as exists to-day in the Probate Division of the High Court of Justice. Cranworth preferred the scheme advocated by Bethell, now Solicitor-General, for making Chancery a Court of administration, as well as a Court of construction, and for allowing the same tribunal to pronounce on the validity and on the interpretation of a will.[1] But the House of Commons showed no inclination to throw fresh provender to the ravening maw of Lincoln's Inn. The Attorney-General, Sir Alexander Cockburn, differed absolutely from his colleague and from the Chancellor, and refused to support the Bill, while the 'Proctors and Doctors of every degree' round St. Paul's Churchyard saw ruin staring them in the face. Not a single expert in the old Probate practice could be found to assist in drafting the Bill, and a dashing young Irish peer,[2] sedulously coached by a learned member of Doctors' Commons, who still survives, administered a stream of damaging interrogatory and criticism.[3] Finally the Bill was dropped in the Lords, where it had been introduced, and the Lower House were not required to pronounce sentence upon it. Nor did the Divorce and Matrimonial Causes Bill of 1855 meet with a better fate.[4]

The existing law in this respect had been held up to bitter scorn by Mr. Justice Maule in an address from the Bench which has become historical, and has been so often quoted that I should feel a certain diffidence in reproducing the following version, were it not obviously the work

[1] Nash, *Life of Lord Westbury*, i. 150.
[2] The fourth Lord Donoughmore.
[3] Hansard, cxxx. 702–720.
[4] Hansard, cxxxiv. *passim*.

of an eye-witness.[1] At the Warwick Spring Assizes of 1845 a labouring man named Hall, *alias* Pallins, was convicted of bigamy and called up for sentence. Maule told the prisoner that it appeared, even from the witnesses for the prosecution, that he had been badly used, and that it seemed very hard, one woman having gone off and treacherously left him, he should not be allowed to marry again and have a wife to comfort him.

'It is indeed, my Lord,' called out poor Hall, 'it is very hard.' 'Hold your tongue, Hall,' quoth the judge, 'you must not interrupt me, what I say is the law of the land, which you in common with everyone else are bound to obey. No doubt it is very hard for you to have been so used and not to be able to have another wife to live with you when Mary Ann had gone away to live with another man, having first robbed you; but such is the law. The law in fact is the same to you as it is to the rich man; it is the same to the low and poor as it is to the mighty and rich, and through it you alone can hope to obtain effectual and sufficient relief, and what the rich man would have done, you should have done also, you should have followed the same course.' 'But I had no money, my lord,' exclaimed Hall. 'Hold your tongue,' rejoined the judge, 'you should not interrupt me, especially when I am only speaking to inform you as to what you should have done, and for your good. Yes, Hall, you should have brought an action and obtained damages, which probably the other side would not have been able to pay, in which case you would have had to pay your own costs, perhaps a hundred or a hundred and fifty pounds.' 'Oh, lord!' ejaculated the prisoner. 'Don't interrupt me, Hall,' said Maule, 'but attend. But even then you must not have married again. No, you should have gone to the Ecclesiastical Court and then to the House of Lords, where, having proved that all these preliminary matters had been complied with, you would then have been able to marry again! It is very true, Hall, you might say "Where was all the money to come from to pay for all this?" and certainly that was a serious question, as the expenses might amount to five or six hundred pounds, while you perhaps had not as many pence.'

[1] *Random Recollections of the Midland Circuit*, 155.

'As I hope to be saved I have not a penny—I am only a poor man.' 'Well, don't interrupt me; that may be so, but that will not exempt you from paying the penalty for the felony you have undoubtedly committed. I should have been disposed to have treated the matter more lightly if you had told Maria the real state of the case and said, "I'll marry you if you choose to take your chance and risk it," but this you have not done.'

And the judge inflicted the punishment of three months' imprisonment, more appropriate, but less dramatic, than the three *days* which figure in the more popular narratives of Hall's hard case.

Cranworth's proposals, however, for the amelioration of the law, which, in a modified form, found their way on to the Statute Book a couple of years later, attracted no favour at this particular juncture. They were pressed with little vigour in the House of Lords, and were speedily abandoned. The chief relic of the Divorce Bill of 1855 is that eloquent pamphlet of Mrs. Norton, now itself forgotten, though echoed by Lyndhurst in the House of Lords, in which, addressing herself to Queen Victoria, she illustrated, by her own unhappy story,[1] the defenceless plight of wives and mothers beneath the ægis of the laws of England.

Without attaching undue importance to Campbell's dark hints of intrigues and cabals,[2] it is plain that there was no great sympathy or harmony between the Chancellor and his law officers. Cranworth and Bethell had differed fundamentally as to the principle which was to guide the Government Registration Bill. The Chancellor insisted on the method of registration of *deeds*, which left to the inquirer all the pains and expense of verification and search; the Solicitor-General was an ardent advocate of the registration of *title*, a vision splendid

[1] *Vide infra*, 162.

[2] 'As you look with interest at the career of our *little Chancellor*, I may tell you that the Attorney and Solicitor General conspire his downfall, each having the hope of replacing him. Their constant habit is to vilipend him' (*Life of Lord Campbell*, ii. 315).

that has found accomplishment in a series of Acts which form a melancholy commentary on the dreams of their promoters. Cranworth got his Bill through the Lords in spite of strenuous opposition on the part of Lord St. Leonards,[1] but in the Commons it met with lukewarm support, and after a reference to a Select Committee, which reported adversely, it was withdrawn.

His most conspicuous failure, however, came about over the attempted creation of life peers. The Aberdeen Cabinet had expired ignominiously in January 1855, but the Chancellor retained his office in the Ministry reconstructed by Lord Palmerston. The new Premier had not been long installed before he made a determined effort to deal with the state of judicial business in the House of Lords. The note of attack had been sounded by Bethell, who declared in the House of Commons that the Supreme Court of Appeal was inferior to the lowest tribunal in what ought to be the accompaniments of a Court of Justice.[2] Cranworth was spared, indeed, from the flouts and jeers which the orator there and elsewhere lavished upon Brougham and St. Leonards,[3] but the speech was regarded none the less as an attack upon the Chancellor, and on other occasions the Solicitor spoke even more strongly of the deplorable state of affairs produced by Cranworth's subservience to the erratic behaviour of his colleagues. Palmerston, as we have

[1] See his pamphlet, '*Shall we Register our Deeds?*' bearing date Jan. 22, 1852.

[2] Hansard, cxxxix. 2120, and see *Life of Lord Campbell*, ii. 335.

[3] 'The Solicitor-General was examined yesterday as to the defects of the Appellate Jurisdiction. He, with his most mincing manner and perfect aplomb, supposed the case of two learned lords, one of whom gave judgments without hearing the arguments, ran about the House, conversed with lay lords, and wrote notes and letters; the other who made declamatory speeches, thumped the table, asked whether anyone would venture to say that was law which had just been laid down by the Lord Chancellor, and who in short entirely forgot the dignity of a judge of the highest Court of Appeal. Brougham and St. Leonards were furious—tried to bully him, but were completely foiled' (*Life of Lord Granville*, i. 171, and cf. *Life of Lord Campbell*, ii. 332).

seen, adopted the device of appointing two Law Lords for life. The suggestion has been commonly fathered upon Cranworth, who always maintained that the legality of the course was absolutely clear, and was utterly unprepared for the storm of opposition which the proposal aroused. It devolved upon him to defend Lord Wensleydale's patent, with such assistance as Lord Granville and Lord Grey could afford, from the raking cross fire of Lyndhurst, Campbell, St. Leonards, and Brougham, and though he stuck bravely to his guns, the result was fatal to the attempted creation and distinctly damaging to his own position as head of the law.[1] The judicial strength of the House of Lords was finally recruited by the elevation of Parke and Pemberton Leigh to the ranks of the hereditary peerage *tout honnêtement* with remainder to their lawful issue,[2] but the relations between the Chancellor and the law officers did not improve, and Campbell, *more suo*, took upon himself to write a letter to Lord Palmerston begging him to compose the strife, which 'in truth has produced the failure of all the measures of law reform which have been brought forward.'

In the session of 1857 the Divorce and Matrimonial Causes Act was carried.[3] If the main laurels in debate were won in the House of Commons by Bethell, now Attorney-General, the tact and pertinacity with which Cranworth forced the Bill through the Lords against the vigilant and strenuous opposition of Bishop Wilberforce were scarcely less conspicuous. For the third reading there was only a majority of two votes, and without the

[1] See *ante*, vol. i. 162. The Duke of Argyll suggests (*Life*, ii. 14) that the vehement opposition of the Law Lords was due to their fear lest, if the precedent were suffered, no lawyer in the future would ever receive an hereditary peerage. 'My Lords,' asked Campbell, 'what has the law done that it should be subjected to this indignity?'

[2] *Life of Lord Campbell*, ii. 331, and cf. *ibid.* 343, 315. Lord Wensleydale and his wife, who were each seventy-five years of age, had no son, and Lord Kingsdown, aged sixty-two, was a bachelor.

[3] 20 & 21 Vict. c. 85.

sorely needed aid of Lyndhurst, the result might have been different. The new Act created a large amount of patronage, which by right belonged to the Chancellor; he placed it unreservedly at the disposition of Sir Cresswell Cresswell, the First Judge Ordinary of the Courts of Probate and Divorce.

On February 19, 1858, Lord Palmerston was driven from office, the victim of Orsini and of the French colonels; on his return to office in June 1859 he chose Campbell as his Chancellor. Why Cranworth was passed over Lord Selborne could never understand.

It could not have been on political grounds; for Lord Cranworth was a Whig, moderate, reasonable, and thoroughly loyal to his party. Nor could it have been for judicial or personal reasons, for Lord Cranworth was a good and accurate judge, well acquainted with common law as well as with equity, and a man of the highest character, of calm, equable temper and invariable good sense, trusted, liked, and respected by everybody.[1]

The mystery is not so great when we consider that, with occasional exceptions, he had been a hindrance rather than a help to his party in debate, that his advice on the question of the Wensleydale Peerage had brought about a humiliating reverse, and, above all, that it had become impossible to retain the services of himself and Sir Richard Bethell in the same Administration.

'Poor Cranworth was much annoyed, but behaves like an angel,' wrote Lord Granville.[2] He acted with the utmost dignity, both then and a couple of years later, when the appointment of Lord Westbury put a further seal upon his supersession. He set an admirable example in the loyal support which he rendered, both in public and private, to his former colleagues,[3] and the day was not far distant when, in the hour of Westbury's

[1] *Memorials, Family and Personal*, ii. 339.
[2] *Life of Lord Granville*, i. 341.
[3] *Ibid.* 481.

disgrace, Palmerston may have remembered the Virgilian lines:

> Turno tempus erit, magno cum optaverit emptum
> Pallanta intactum.[1]

Assiduous, and most useful in his attendance at the judicial sittings of the House of Lords, Cranworth was not idle as a practical legislator. It was during this period of his life that he carried the Act which is called after him,[2] as well as an Endowed Schools Bill, which enabled the children of Nonconformists to enjoy the benefits of King Edward's Schools.[3] He bore his part also in the business of the Privy Council, and he succeeded in kindling very uncharitable feeling in the bosom of the late Lord Coleridge over the proceedings against the contributors to 'Essays and Reviews.'[4] Writing to his father on June 2, 1863, 'John Duke' remarks acrimoniously, 'when you are there I cannot fight freely with such a creature as Cranworth and insult him *comfortably* as a Christian should.' But Cranworth's mild Erastianism was completely lost in the superb contempt which Lord Westbury displayed for the susceptibilities of the clergy and the devout laity.

Lord Cranworth's leisure was mainly passed at his seat at Holwood Park, a finely situated house within easy drive of London, and famous as having been once the abode of the younger Pitt. It was beneath an oak tree in the grounds that William Wilberforce announced his intention of flinging down the gauntlet against the slave-traders. Here it was the Chancellor's delight to entertain his friends and to revive old memories of the Norfolk Circuit with Crabb Robinson and other survivors of those days of struggle.[5] But fortune's wheel had not concluded its

[1] *Aeneid*, x. 503. [2] *Supra*, 69. [3] 23 & 24 Vict. c. 11.
[4] *Life of Lord Coleridge*, ii. 120.
[5] Crabb Robinson, iii. 472. As far back as April 1835 Crabb Robinson records a meeting 'at Rolfe's hospitable table' when Jeffrey remarked, 'I was always an admirer of Wordsworth.' 'You had a singular way of showing it,' interposed the diarist, mindful of a famous article in the *Edinburgh Review* (*Ibid.* iii. 65).

full revolution; another was yet to be added to the strange vicissitudes which mark his career. On July 4, 1865, Lord Westbury resigned the Great Seal in the painful circumstances described on a later page,[1] and Palmerston, without delay or hesitation, asked Cranworth to resume it. This resort to the old veteran, now in his seventy-fifth year, whom he had twice deliberately passed over, was the more inexplicable that in the Attorney-General, Sir Roundell Palmer, the Prime Minister had an almost ideal candidate at his elbow. Lord Selborne himself suggests that the incompatibility of his ecclesiastical views with those of Lord Shaftesbury rendered Palmerston indisposed to invest him with the Church patronage appertaining to the Chancellorship.[2]

Lord Cranworth's meek and generous spirit must have felt an unwonted glow at this surprising reinstatement, and his satisfaction was enhanced by the cordiality of his reception among old friends in the Cabinet and at the Bar. One congratulation, however good the intention, was somewhat maladroit: 'Well, Cranny, Kingsley is right, it *is* better to be good than clever.'[3] His final tenure of office was short and uneventful. Lord Russell, who had succeeded Palmerston, resigned over the Reform Bill in June 1866 and with him Cranworth retired finally into private life, though to the end he continued to do his work in the House of Lords. He spoke there for the last time on July 20, 1868, and he died, after a very brief illness, on the 26th of the same month. His wife had predeceased him in February; there was no issue of the marriage, and the peerage became extinct.[4]

[1] *Infra*, 273.

[2] *Memorials, Family and Personal*, ii. 494.

[3] The story that the moral was thus applied to Lord Cranworth by no less a personage than Queen Victoria rests upon substantial authority, but I take leave to doubt it.

[4] Another Norfolk man, Robert Thornhagh Gurdon, assumed the title of Baron Cranworth on his elevation to the Peerage in 1899. The village of Brampton as well as that of Cranworth was on his property, but Sir Henry Hawkins, who was included in the same creation, begged

As I began this chapter with a eulogy on Baron Rolfe from the pen of Lord Campbell, I cannot do better than close it with an appreciation of Lord Cranworth set down by Lord Selborne.[1]

Take him for all in all he was one of the best Chancellors I have known. Others had more splendid gifts; but in him there was nothing erratic, nothing unequal. In steady good sense, judicial patience, and impartiality and freedom from prejudice he was surpassed by none.

that he might be designated by the spot which contained his only little plot of real estate.

[1] *Memorials, Family and Personal*, ii. 494.

CHAPTER IV

LIFE OF LORD CHELMSFORD DOWN TO HIS ENTRY INTO PARLIAMENT

1794–1840

FREDERICK THESIGER, first Baron Chelmsford, was born on July 15, 1794, in the parish of St. Dunstan's in the East. His family, as the name would imply, was of German origin, and his grandfather, John Andrew Thesiger, the nephew of a Lutheran minister at Dresden, seems to have come to England about the middle of the eighteenth century. Here he was fortunate enough to attract the notice of the Marquess of Rockingham, who employed him as an amanuensis, and during one of his brief spells of office, conferred upon his wife a very desirable sinecure, the Housekeepership of the Excise Office in Broad Street. When Frederick was beginning to make his way in the world, it used to be whispered with bated breath that his grandmother had been a housekeeper.

To John Andrew was born a numerous family of sons and daughters, the eldest of whom, Sir Frederick, attained the honour of knighthood and the rank of admiral, after having fought gallantly under Rodney, and served as aide-de-camp to Nelson at the battle of Copenhagen in 1801. It was he who rowed with the flag of truce through the thickest of the firing, an exploit which is commemorated in bas-relief on the column in Trafalgar Square. A younger brother, Charles, married Miss Mary Anne Williams, the daughter of a City merchant, and their third son is the subject of this memoir. Mrs. Charles

Thesiger died when the latter was little more than a year old, whereupon her husband resigned an appointment which he held at the Customs House, and proceeded to the West Indies as private secretary to Admiral Bentinck, the Governor of St. Vincent.

Frederick Thesiger's education was irregular and imperfect, a misfortune which he never ceased to lament. His first schoolmaster was Dr. Burney, a famous 'Grecian' whose establishment at Greenwich, into which the future Lord Chancellor was plunged at the age of seven, left on the youthful pupil an impression of misery and tyranny which was never eradicated. In 1806, having shown a strong desire to follow in the footsteps of his uncle and namesake, he was transferred to a naval academy at Gosport, kept by another and very different Dr. Burney. In July of the following year he joined the 'Cambrian' frigate as one of Captain (afterwards Sir Charles) Paget's 'followers,' a term signifying a midshipman who accompanied his captain into the ships which he might successively command. Thesiger smelt powder with the expedition under Cathcart and Gambier, which seized the Danish fleet in 1807, and he spent a few months prize-hunting off the Spanish coast. Then, on the 'Cambrian' being paid off, he went back to school at Gosport, until his captain should receive a fresh ship.

The death of his elder brother, the only other member of the family who had survived infancy, caused a sudden alteration in his destiny. Mr. Charles Thesiger, who was now collector of the customs at St. Vincent, had devoted his savings to the acquisition and improvement of a sugar estate, which promised to be an excellent investment. Frederick was taken out of the Navy, and after a couple of years in a private school at Ealing, 'which had all the disadvantages of a public school in point of numbers, and none of the advantages either from the classical attainments of the masters, or the high tone and gentlemanly spirit of the boys,'[1] he joined

[1] Chelmsford MS.

his father in the West Indies. His ambition had been to enter the army and emulate Lord Erskine as 'soldier and sailor too,' but this he abandoned, together with the alternative of a course at the university, in deference to his father's wishes. It was decided that he should undertake the management of the paternal plantations, and combine that duty with a practice at the West Indian Bar.

The legal profession in the islands was fairly remunerative, and was not exacting in the matter of apprenticeship. A slender law library and a pipe of old Madeira formed the sole equipment with which one successful advocate began his forensic career. Thesiger was making arrangements to eat the requisite dinners at an English Inn of Court, when another freak of fortune gave a twist to his future. His father's sugar estate was situated on the side of 'La Soufrière,' then fondly deemed an extinct volcano. But on April 30, 1812, amid the same accompaniments of horror and gross darkness which marked the fatal days of May 1902, the mountain burst out into violent eruption.

> Dark and voluminous the vapours rise
> And hang their horrors in the neighbouring skies
> While through the Stygian veil that blots the day
> In dazzling streaks the vivid lightnings play.[1]

Young Thesiger gives a graphic description, unhappily too long to quote, of the eruption, of which he was an eyewitness from the sea, and of the desolation which followed in its train. The crater had scarcely become quiescent when, at no small personal risk, he made his way to the spot where his father's estate had stood; not a vestige remained. The two valleys of which it consisted were filled up, every building had disappeared, and there was one uniform brown coating of ashes and volcanic dust from the beach to the mountain top.

[1] I have never been able to discover for what reason Cowper's poem from which these lines are taken is called 'Heroism.' Mr. J. C. Bailey, in his recent edition, gives no explanation.

This day of ruin and devastation was afterwards regarded by Lord Chelmsford as the turning-point in his career. The St. Vincent Bar, where he had already made a number of useful friends, now seemed the only chance of a livelihood and an independence. He promptly started for England to begin his terms, little imagining that he had bidden a last farewell to the West Indies. Shortly after his arrival he entered at Gray's Inn, of which society his father's friend, Mr. G. S. Holroyd, was a member. In the chambers of Mr. Walker, a distinguished and kind-hearted conveyancer of somewhat strange appearance and uncouth manners, he mastered the rudiments of real property law, and then spent a twelvemonth over bills and answers in Chancery with an equity draftsman, Mr. Heald. His further studies, in the chambers of Mr. Holroyd, were cut short after a few weeks by the elevation of that gentleman to the Bench, but Thesiger finished up his legal education by two years with a well-known special pleader, Mr. Godfrey Sykes.

It will be apparent that his pupilage was longer and of a more varied character than was customary, and it probably owed its extension to a sense of the multifarious demands that are made upon the knowledge of a colonial counsellor. At any rate he gained a much better grounding in the law than his professional rivals were willing at a later period to acknowledge.

I read, he says, Coke upon Littleton at least three times, and the notes which will be found in my copy of that work will show that my reading was not careless or superficial. Fearne on 'Contingent Remainders' was one of my favourite studies. Shepherd's 'Touchstone' will be found by my notes to have engaged my careful attention. All Lord St. Leonards' works were read by me more than once. And, as if I had foreseen the future importance of that species of legal knowledge I studied books upon equity and was delighted with the enlarged principles which they unfolded, so superior to the narrow spirit and rigid technical rules of the common law.[1]

[1] Chelmsford MS.

His diligence, and, we may well believe, the personal charm which clung to him through life, commended him so strongly to Mr. Sykes that the latter implored him not to waste his abilities on the planters and mariners of St. Vincent. Thesiger was extremely diffident as to his own merits, he was entirely without friends or connections; but he finally yielded to the importunities of his master, and, having obtained his father's permission to try his luck at the English Bar, he was called on November 18, 1818. The story of his first brief is best told in his own words:

There was an old attorney named Clennell (whom I can now bring before my mind's eye in his drab shorts and white cotton stockings) who was a client of Mr. Sykes'. He was in the habit of coming to the Chambers, and storming if his pleadings were not ready, and he would sometimes turn his wrath upon the pupils who had them in hand. Upon one occasion of an outburst of this kind I rushed into the pupil room, with an exclamation that if I was starving I wouldn't have that man for a client. There used at this time to be certain motions of course in the Courts which began with a counsel's signature for which he received half a guinea; and were followed in due course by the rule absolute, for which the fee was a guinea. On November 19, the day after my call, my young clerk brought me in a paper to be signed with the name of Clennell as attorney upon it, and a very crooked half-guinea [1] for the fee. He afterwards sent me the instructions to make the rule absolute, and from that day I neither saw him nor heard of him any more.

In those days the Court of Common Pleas was a close borough, and the stream of business in the Exchequer was all but dry; it was in the King's Bench that young

[1] Chelmsford MS. The half-guinea was afterwards set in a locket which Mr. Thesiger gave to his wife; one day the locket was dropped and lost. Years afterwards Lady Thesiger, as she had become, received a half-guinea piece as change, in mistake for a half-sovereign. It was crooked, and bore the date of 1818, and she was always convinced that the missing coin had thus strangely come home. Her husband confesses to being more sceptical.

barristers had to learn their profession, and this is how Mr. Thesiger made his début. On the last day of term the Courts were accustomed to sit till midnight, if necessary, to clear their paper. About ten o'clock on one of these evenings he was still in his place, in obedience to the ancient precept never to rise before the judges, when a motion was thrust into his hands. It fell from Chitty's bounteous store, and as he was too much preoccupied for the moment, the junior in Court received it as a perquisite.

It was a motion for an attachment for not performing an award. No sooner had I with fear and trembling stated the terms of my motion, when Lord Chief Justice Abbott, with a voice of thunder, said, ' for not performing an award ? ' I almost dropped upon my seat when Chitty whispered to me ' pursuant to the Master's *allocatur*.' What this was I didn't know, but I repeated the talismanic words, when, to my delight, I found the judges all toned down to the utmost mildness, and compliance with my application.[1]

Thesiger declares that he was, by nature, of a nervous temperament, and the King's Bench was not calculated to inspire confidence in the breast of the tiro. Abbott, who had succeeded Lord Ellenborough in the very term in which Thesiger was called, was scarcely more urbane than his predecessor. He has suffered comparatively lightly at the hands of his brother circuiteer, Lord Campbell, but the following sketch of him from Thesiger's pen is instinct with life:

He was a most able lawyer, of singular accuracy and precision in his judgments, never deciding anything beyond what the occasion required, and impatient of repetition and of every exhibition of humour or of any attempt to excite laughter in the conduct of a cause. His court was a school of stern and severe discipline. His manners were extremely rough and uncourteous, and exhibited themselves in the most capricious way. Frequently when counsel were doing nothing to provoke his anger, he would address them in a tone

[1] Chelmsford MS.

which a gentleman would hardly use towards an offending menial. He thus became the terror even of the leaders who practised before him, and Brougham was as tame and submissive as the others, never venturing to exhibit any of his powers of ridicule or to deal with any case otherwise than seriously, a forbearance which strikingly contrasted with the elasticity of spirit when, by another judge occasionally occupying the Chief Justice's seat, the dead weight was removed for the day. Sir James Scarlett was a remarkable exception to the general submissiveness of the Bar. Before him the despotism of the Chief Justice seemed to stand rebuked, his roughness was smoothed, his violence tamed, and his whole nature appeared to undergo a complete transformation. I have witnessed (but very rarely) a slight disagreement between the two, when, after some schooling from the advocate, the Chief Justice has complained in a humble and deprecatory tone of the manner in which he had been taken to task. I have heard that Lord Tenterden when at the Bar was noted for his obsequiousness to the Bench. This is quite consistent with the meekness which he exhibited when any offended counsel remonstrated with him.

I was supposed to be a favourite of his, but his capricious humour did not spare me. Upon one occasion I was making some application to him, which was quite in the regular course, when he burst out upon me in the offensive tone and manner which I have described. I was roused to indignation and said, 'I don't understand being addressed by your lordship in such a tone, and it is highly improper for a judge to use to any gentleman of the Bar, and I will not submit to it.' The chief grumbled out some sort of apology, and I afterwards received the thanks both of Brougham and Gurney for my spirited remonstrance, which neither of them would (I am satisfied) have ventured to make, if they had received a similar insult.[1]

On other occasions Lord Tenterden's dislike of repetition and love of accuracy were known to be overcome by an even greater precision and by simplicity, natural or affected, on the part of the counsel. 'You've told us that three times, Mr. Maule,' he exclaimed angrily.

[1] Chelmsford MS.

'Only twice, my Lord,' was the reply, as Maule looked up at him through his spectacles. In a similar tone he complained to Chitty that while addressing the full Court *in banc*, he had said the same thing over four times. Chitty acknowledged the correctness of the observation, but with great naïveté added, 'Why, you see, my Lord, there are four of you.'

Thesiger's choice of circuit and sessions was determined by a curious accident. The Vestry Clerk of Lambeth parish conceived himself under some obligation to the family, and intimated that if Mr. Frederick joined the Surrey Sessions he could keep him in work. The hint was followed, but the Vestry Clerk, who was not a solicitor, had miscalculated his influence with the parochial authorities. Not a brief from Lambeth reached Thesiger's chambers, until, in after years, when his reputation was well established, he received a general retainer on behalf of that parish. But the Surrey Sessions just then presented a remarkable opening for talent. The lead had been suddenly snatched by a young barrister, Mr., afterwards Sir Thomas, Turton, at the very bottom of the list. For twelve months Thesiger was his only junior, and appeals required two counsel; forced upon the solicitors in this novel fashion, his natural quickness and his readiness of speech enabled him to make good the ground he had thus acquired. His first independent chance came with a returned defence on behalf of two women who were charged with assaulting the exceedingly unpopular landlord of some house property within the rules of the King's Bench. His energetic efforts were rewarded by an acquittal, and he passed out of Court through a lane of sympathetic bystanders, who loaded him with thanks and congratulations. 'Sessions were sessions' in those days; apart from the prisoners there were generally fifty or sixty appeals at the House in Horsemonger Lane, known to modern ears as Newington, and when Turton accepted an appointment in India three or four years

later, Thesiger succeeded to the lead, which he never lost.[1]

But, while the Surrey Sessions formed his main dependence, a most useful crutch was derived from a tribunal which has long since disappeared. The tragedy of 'Jacob Homnium's Hoss,' and the little bill of costs which, in Thackeray's language,

> Did saddle hup a three-pound debt
> With two-and-twenty pound,

has been forgotten, and I doubt whether many law students could define to the satisfaction of the examiners the powers and constitution of the Palace Court. Founded in the reign of Charles II., with jurisdiction extending twelve miles round London, exclusive of the verge of the Palace of Westminster, it had the right to try causes up to any amount; but, where the sum involved was over 5*l*., they were removable to the superior Courts, upon putting

[1] The following anecdote has been preserved as an instance of his dexterity in a not very exalted form of advocacy. His client was charged with smuggling cigars alleged in the indictment to be of a certain weight. There was no defence on the merits, but the counsel insisted on having the cigars weighed, after the straws had been extracted from their middle. Thus stripped they failed to turn the scale, and an acquittal necessarily followed. In his autobiography Lord Chelmsford tells a curious story illustrative of the customs which then prevailed both at the Metropolitan Sessions and at the Old Bailey. Only two attorneys regularly attended the Surrey Sessions, and counsel were in the habit of receiving instructions and fees both in defences and in prosecutions from a variety of unqualified hangers on, many of them of very indifferent character. Thesiger was scandalised at the practice, but acquiesced with the others, until the departure of his friend Turton, who had been prime favourite with these outcasts. He then seconded a proposition, which was carried unanimously, that no member of the Bar should henceforth accept briefs from unauthorised practitioners. Thesiger had a consciousness that the edict was mainly aimed at him, as Turton's heir-presumptive, especially since Cowley, the proposer, was invariably retained by the two attorneys who were thus constituted monopolists. To his no small amusement they promptly transferred their patronage to him, leaving Cowley disconsolate. It was of Cowley, whose contradictious disposition had acquired him the sobriquet of 'General Issue,' that Spankie said 'If I were thrown upon a desert island with him and a bear, I would prefer the bear's company.'

in bail. The nominal judges were the Lord Steward, the Knight-Marshall, and the Steward of the Marshalsea, of whom the last alone ever sat in Court. It was a strictly close preserve, and the right of practising in it was reserved to four counsel and six attorneys, who had all purchased their places.[1]

By the kindness of a relative, Thesiger secured a place at this Bar for 2,000*l.*, about the price of a cornetcy in a crack cavalry regiment, and, during the four and a half years for which he attended, he not only amassed a decent income, but gained a practical acquaintance with business which he might have sought in vain in the superior Courts. It is true that the tribunal, which only sat once a week, on Fridays, was almost exclusively used for the recovery of small debts, and that the juries, drawn chiefly from the shopkeeping class, had small sympathy with persons who had the temerity to dispute their obligations. 'Do you believe, if there were any truth in the defendant's story, that the plaintiff would have been rash and foolish enough to have incurred all the expense of this action?' was a favourite dilemma,

[1] Thackeray, in *The Ballads of Policeman X.*, has wedded these bald facts to verse:

'A few fat legal spiders
Here set & spin their viles;
To rob the town theyr privlege is
In a hayrea of twelve miles.

'The Judge of this year Court
Is a mellitary beak,
He knows no more of Lor
Than praps he does of Greek,
And prowides hisself a deputy
Because he cannot speak.

'Four counsel in this Court—
Misnamed of Justice—sits;
These lawyers owes their places to
Their money, not their wits;
And there's six attornies under them,
As here their living gits.'

It was the determined crusade initiated by Matthew James Higgins (Jacob Omnium) in the columns of the *Times* which brought the Palace Court to its end in 1849.

when the defendant had made out a strong case. But there were plenty of opportunities for rough-and-tumble advocacy, and on one occasion a case brought Thesiger into consultation with the law officers, Gifford and Copley.

A Bar constituted on the purchase system was not likely to be of very high calibre, though the Palace Court could count Erle, afterwards Chief Justice of the Common Pleas, among its alumni. Within six months Thesiger had complete command of the work. One of the old counsel who had sat there for a quarter of a century said to him in supplicatory tones, 'We have got on these many years without any law—don't disturb us by introducing legal questions into our Court!' Another was an Irishman, who had abandoned surgery for law in consequence, it was said, of the fatal result of an operation, and whose strange appearance and manners and remarkable style of speech did much to lower the Court in the public estimation.[1]

The choice of the Surrey Sessions implied almost as a matter of course the Home Circuit, on which, unknown and unfriended, it was five years before Thesiger was entrusted with a brief in the Civil Court. The road of

[1] This gentleman, Flanagan by name, had been a surgeon in Trinidad when Picton was Governor, and had been a witness for the defence upon the latter's trial for permitting torture to be administered to the girl Louisa Calderon in accordance with Spanish law (*State Trials*, xxx. 225). His admiration for Picton very nearly got him into trouble at a later date. There were some who considered that Sir Thomas had been harshly treated by the Duke of Wellington, and it so happened that amid the mob which broke the windows at Apsley House during the Reform Bill crisis, Flanagan was seen mounted upon a fiery chestnut horse, waving an umbrella with which he pointed first to a heap of stones and then to the windows. His apparent hostility to the Duke was attributed to his old connection with Picton, and he was actually brought before a magistrate. The explanation which he gave to Thesiger is declared by the latter to have been thoroughly characteristic of his general blundering behaviour both in and out of Court. 'When I pointed with my umbrella to the stones and then to the window, although I was silent, I said as plainly as words could speak, "How can you be such blackguards as to take *them* stones and throw them at *them* windows?"' (Chelmsford MS.)

promotion, as Lord Coleridge used to say, from a hopeless defence to a rotten cause, is long and weary. The personnel of the circuit mess was very much what it had been when Campbell was elected to it fifteen years earlier.[1] Garrow, indeed, had gone, and Shepherd and Best, but there was the same plethora of serjeants, Taddy and Onslow, Lawes and D'Oyly, while Marryat and Gurney still fought and wrangled. Of Marryat, Thesiger has many a circuit legend—how he came into the Court of King's Bench one morning, with the announcement that he had a brace of *mandami* to move, and how, in a nuisance case, he told the jury 'that the little volumes of smoke which issued from an ordinary chimney were nothing to the vast encyclopædias vomited forth from the defendant's manufactory'; and he illustrates his absolute absorption in the case upon which he was engaged for the time being by the following story. A witness under cross-examination fell down in a fit and was carried out of Court; all present were full of anxiety and alarm, with the exception of Marryat, who sat composedly turning over the pages of his brief as if nothing had happened. At last the judge, leaning over from the bench, expressed a hope that the poor man was better. 'Oh, my Lord,' said Marryat, looking up, 'it does not signify in the least, we have plenty of witnesses to the same facts.'

Thesiger's first great case was the trial of Thurtell, Probert, and Hunt, for the murder of Mr. William Weare, 'who dwelt in Lyon's Inn.' The crime and the trial, which latter took place at Hertford, January 6, 1824, before Sir James Alan Park, are too hackneyed for repetition here. Thesiger appeared for Hunt, who was charged with being an accessory before the fact. Of his guilt, at any rate after the fact, there could be no doubt, but he had given important information to the magistrates on the promise, so he maintained, that he would be accepted

[1] *Infra*, 136.

as King's evidence. This promise, however, as well as the candour and accuracy of Hunt's information, was vehemently disputed; Probert also had made a statement, and as his wife, who was a very material witness, would have been unavailable if he were in the dock, the prosecution elected to avail themselves of his testimony and to put Hunt on trial.

When the latter was called upon to plead, Thesiger made a vigorous but ineffectual protest against the breach of faith of which he alleged the magistrates to have been guilty. The 'vehemence and propriety,' to quote from the judge's summing-up, in which the young counsel pressed his objections against a hostile Court, and the judicious reserve of his subsequent cross-examination,[1] stamped him as an advocate of high promise. His arguments were viewed with scant favour by the Court, but Hunt's death sentence was commuted to transportation for life,[2] a circumstance which Thesiger always attributed to his exposure of magisterial injustice.

A curious scene occurred after the jury had pronounced their verdict. It was about eight o'clock in the evening of the second day of the trial when we were all exhausted and in a state of nervous excitement, and the judge was preparing to put on his black cap to pronounce sentence. At this awful moment Chitty, the celebrated special pleader, rose to move in arrest of judgment. He was always a confused speaker at the best of times, but he was then in such a state of nervous trepidation that he could hardly articulate, and in the midst of a confused jumble of words it was with difficulty we could understand his objection—that the trial had begun on January 6, the Feast of the Epiphany, which was a *dies non* like Sunday, and that therefore the whole proceeding was void. The only answer given to this objection by Mr. Justice Park was expressed in these terms, 'Why,

[1] The law did not allow him a speech to the jury.

[2] There was not much time in which to obtain a reprieve, for the prisoners who were convicted on January 7 were doomed to die on the 9th, and on that day Thurtell was hanged.

Mr. Chitty, the Lord Chief Justice frequently tries causes on Good Friday,' to which Chitty replied, ' talking of Good Friday puts me in mind of a story,' and he then told the well-known anecdote, but with the omission of Pontius Pilate, the only point.[1]

After his display on this occasion Mr. Thesiger was assured by one of the prosecuting counsel that his fortune was made, but the friendly prediction was not immediately verified. A brilliant defence, an acquittal obtained in the teeth of desperate odds, often prove a mere will o' the wisp to a too sanguine advocate. It is not until the briefs flow in steadily on the civil side that he can count upon having reached the straight and narrow path. The first case which brought Thesiger the complete confidence of the attorneys was an ejectment action which was tried at Chelmsford Assizes in 1832, and twice again in the following year. No fewer than three juries and three judges, Baron Garrow, Chief Baron Lyndhurst, and Baron Parke, had successive seisin of the cause before he was able to establish his verdict, and from that hour the leading business on circuit was at his disposal.

This success was all the more remarkable that it had been won in a stuff gown. A year or two earlier he had been persuaded by his friend Mr. Barnewall, the reporter, to apply for the coif and forsake the King's Bench for the Common Pleas; and Barnewall generously offered

[1] Chelmsford MS. I am afraid that in my former volume I have appreciably post-dated the ' well-known anecdote ' (*ante*, vol. i. 306); the original author appears to have been Serjeant Davy, the offending judge, Lord Mansfield (Woolrych, *Lives of Eminent Serjeants-at-Law*, ii. 624). In connection with the Thurtell case Lord Chelmsford relates an anecdote which did not come out in the evidence, but was related to him by his solicitor, and which shows the daring and reckless character of Thurtell. The night of the murder was fine and moonlight, and, as Probert and Hunt, who had been delayed on the road from London, were making their way along the lane to Gill's Hill Cottage, they heard the voice of Thurtell singing, ' Bright Chanticleer proclaims the morn.' And when he approached them he was holding Weare's watch by the seals and chains. Swinging it round his head, he said to them, ' My boys, I've done the trick.'

to lend him any money he might require during the change of venue. Thesiger got so far as sending in his application, but withdrew it on learning that thirteen other barristers had already anticipated him. While he was still in a state of indecision, a note was tossed down to him in Court by Lord Tenterden; it contained, without any comment, the Horatian tag:

me vestigia terrent
Omnia te adversum spectantia, nulla retrorsum.[1]

As the thirteen who had persevered were considering the mottoes for their rings, Sir George Rose suggested 'Scilicet,' which he Englished as *Silly Set*, a prediction which was justified, in Thesiger's opinion, by the subsequent abolition of their exclusive privileges. The coif, however, as we have seen, proved no obstacle to Wilde, and except for the brief interregnum of 1834–6, due to Brougham's unconstitutional warrant, the serjeants retained their monopoly until 1846. Thesiger records that when Wilde was making his fervid appeal on behalf of his brethren whose craft was endangered, Serjeant Storks turned to his neighbour and whispered, 'Brother Goulburn, I'll tell you what we are like, we are like charity children who are having a charity sermon preached for them.'[2]

In the summer of 1834 Thesiger was made a King's Counsel by Lord Brougham, thanks, largely, to the good offices of Lyndhurst, for his strong Tory views had brought down upon him the displeasure of the Chancellor. Throughout the years of political excitement which attended and followed the great Reform Bill, he enjoyed a lucrative practice before Committees in the House of Commons. At one time he thought seriously of abandoning circuit and the Law Courts for what corresponded to the modern Parliamentary Bar. He was dissuaded by Sir George Rose, who gave his opinion 'in the words which an old thief would employ to a young one, "Don't take to the House line, stick to the Road."'

He always looked back with especial pride to his

[1] *Epistles*, i. 1. 74. [2] *Ante*, vol. i. 434.

victory on behalf of Sir James Scarlett, whose seat at Norwich was challenged by the Whigs and only saved by the casting vote of the Chairman,[1] himself a Whig, it may be added. The defence seemed hopeless. There had been treating and bribery on a lavish scale, but Thesiger and Follett between them managed to break down case after case of agency, till at last the former considered himself at liberty to join his circuit at Lewes. Within twenty-four hours he was hastily recalled to London by the intelligence that his leader, Mr. Harrison, who then enjoyed the bulk of the Committee practice, had allowed their opponents to establish the fact of agency which had hitherto been successfully resisted. Posting through the night, he was in time, with the aid of Follett, to retrieve the situation, but how it was done he could never remember.[2]

But the most important of all his Parliamentary cases was the petition brought in 1835 against Daniel O'Connell and Edward Ruthven, the members for the city of Dublin. The hearing occupied ninety days before the Committee, and more than a year under a commission to examine witnesses in Ireland. Thesiger claimed the seat for the unsuccessful candidates, but, if the Committee had

[1] Mr. Shaw Lefevre (afterwards Speaker of the House of Commons, 1839–57); he died as Viscount Eversley, at the age of 94.

[2] Harrison was a man who owed his position mainly to the want of competition. He was a singularly washy speaker, and his style of oratory was compared to a person walking with his shoes full of water. On one well-remembered day he started up, with small or no provocation, and exclaimed: 'I beg leave to say that I treat the observations of Mr. Thesiger with contempt,' to which the interrupted one merely remarked that if his learned friend would only treat them with silent contempt, he would be regular. During the hearing of the Norwich Petition, Scarlett's criticisms and suggestions reduced his counsel to such a state of nervousness that they had to request him to keep away from the committee-room. He found serious fault, *inter alia*, with Thesiger for omitting to ask a dangerous witness whether he (Sir James) 'didn't distinctly say "I would have no bribery."' Had Scarlett himself been briefed on behalf of a stranger, he would have died rather than put such a question; but lawyers, however subtle and acute, rarely retain a cool head when they are litigants themselves (Chelmsford MS.).

refused to strike off the last name to which Thesiger, on behalf of his clients, objected, his list was exhausted, and it would have been impossible for him to succeed. The sitting members, however, had run completely dry, and both the seats were awarded to the Tories,[1] against whom O'Connell promptly presented a cross petition. This petition was abandoned, but not before O'Connell's solicitor had actually attempted to retain his former adversary on his behalf.

In after years Thesiger expressed his deep regret at the transference of the hearing of election petitions to the judges, a regret in which most of the best legal authorities concurred, and one which recent events have gone far towards justifying. But a worse tribunal than the old House of Commons Committees in the years immediately following 1832 it would be difficult to imagine. In the Hull case, in 1837, when Thesiger appeared on behalf of the sitting Tory members, William Wilberforce and Sir Walter James, the decisions of the Committee were so flagrantly partial and corrupt that the reporters refused to publish them on the ground that they were not entitled to the slightest authority. If, however, the curious care to turn to the pages of 'Ten Thousand a Year,' they will find the whole story set out, *mutatis mutandis*, in the proceedings upon the Yatton Petition.

The Hull Committee was composed of eight Liberals and three Conservatives, the Chairman being Sir George Strickland, Liberal member for the West Riding, who figures in Warren's pages as Sir Caleb Calf. The petitioners had abandoned all hope of success until they saw the composition of the Committee. Then Mr. Wilberforce was promptly unseated, in the teeth of the evidence, on the ground that his property qualification was imperfect, and it became obvious that his colleague was about to share his fate. Full of indignation at the daring partisanship which was being displayed, Thesiger resolved upon a public protest before the final iniquity was perpetrated.

[1] George A. Hamilton and John Beattie West.

A hint of his intention had got abroad, and when the Committee met on the following morning the room was crowded.

I rose, says the chief actor,[1] in the midst of breathless silence and began by inveighing against their decisions, which, I told them, would not be landmarks to follow but beacons by which all future Committees would be warned. I then pointed out in strong language the glaring partiality of their conduct, and told them that they were even then considering whether they could muster resolution enough to pursue their reckless course of inconsistency. 'But,' I said, 'I dare you to do it; much as you wish it, you have not the courage thus to consummate the ends which you have looked to from the beginning. I disdain to argue the question, I point to your decision of yesterday, and defy you to do your worst.' There was a great excitement in the room, and, as I rose to leave it, there was a murmur of applause. Sir George Strickland asked what the noise was, upon which Hilyard rose with great solemnity and said, 'It's only the bystanders cheering my learned friend Mr. Thesiger as he leaves your committee room.'

If the Committee were not daunted, the petitioners were, and a compromise was arrived at by which Sir Walter James retained his seat and one of the opponents took the place of Mr. Wilberforce.

It required the conscious weight which comes from an assured position in the profession to make such a protest effectually and without interruption. But, with his silk gown, Thesiger had not only acquired the lead of his own circuit, but had forged rapidly to the front in London. In addition to great industry and a vigorous and logical understanding he was endowed with physical gifts which were denied to many of his competitors, and notably to Serjeant Wilde. Standing over six feet high, of a muscular and manly build,[2] his handsome and vivacious

[1] Chelmsford MS.

[2] His agility of body was such that, long after he had become a law officer, an observer in the Press vowed that he would back him in a foot race against any member of the Bar. The same writer,

countenance and his animated gestures gave juries an early prepossession in favour of his client. Carefully eschewing any pretence of eloquence, he would put his points plainly and forcibly to the Court, or talk to the jury in a sort of homely chit-chat, which robbed them of all suspicion. He possessed a gift of narration which seemed to render comment superfluous, and he was particularly adroit in examination in chief, taking the witness by the hand and conducting him through his story without allowing him to drop anything by the way. Long experience had given him a full insight into the mental processes of the varying types of humanity with whom he had, day by day, to deal, and an instinctive sense of finesse made him invaluable in cases where women were concerned; the display of conscious beauty and the blushes of assumed innocence found no loose joint in his harness.

His high sense of honour, courteous bearing, and kindness of heart made him justly popular among his brethren of the Bar. His love of a joke was irrepressible. 'Halloa,' called out a man in the robing room, 'whose castor is this?'—for in those days beaver had not been replaced by silk. 'Pollux (Pollock's), of course,' was Thesiger's instantaneous rejoinder. Most of his sayings have either gone down into limbo or been appropriated to the legal humorist of the hour. One may be here preserved. In a town on the Home Circuit, no matter which, the High Sheriff for the year, though a young man, happened to be afflicted with a bulbous nose that 'flamed in the forehead of the morning sky.' Somebody, in Thesiger's hearing, remarked that it was nothing to the nasal organ by which the Sheriff's father had been distinguished. 'Ah, I see, *damnosa hereditas*.'[1]

speaking of his 'fine open countenance,' pays the dubious compliment of saying that he is 'most unlawyer-like looking.' On the Woolsack his shapely legs, cased in their silk stockings, were the admiration of the ladies in the gallery of the House of Lords (*Letters of J. L. Motley*, i. 259).

[1] Sir John Hollams in his *Jottings of an Old Solicitor* (p. 197).

Thesiger's first attempt to enter Parliament was made in December 1839, when he opposed Wilde, who was seeking re-election at Newark upon his appointment as Solicitor-General; the influence of Lord Lincoln, son and heir of the Duke of Newcastle, had directed the choice of the local Conservatives. It was regarded as a certain victory for the newcomer, but, after a hard conflict, he was defeated by nine votes. The expenditure on the Liberal side was so enormous and of such dubious legality that, as we have seen,[1] Wilde never stood for Newark again. The Conservatives had to face an amount of violence not unworthy of the Chippinge election described by Mr. Stanley Weyman—the military were called out, and during the latter part of the day the voters had to be protected to the polling booth by dragoons. The vanquished candidate had the consolation of convicting several of the Solicitor-General's supporters at the next assizes on the charge of drugging and abducting certain free and independent electors.

A few months earlier Thesiger had successfully defended the Marquess of Blandford's seat at Woodstock against the petition of his brother, Lord John Churchill. In March 1840, the grateful client succeeded to the peerage, and offered the seat to his counsel. The proposal was gladly accepted, and Thesiger sat for the ducal borough until his appointment as Solicitor-General in 1844, when the patron insisted on handing the seat over to his own eldest son. Thesiger took refuge in the almost adjacent constituency of Abingdon. Here, however, he had to fight hard, both in 1845 and in 1847,

describes Thesiger as being a very pleasing and popular advocate, but timid, with a great dislike of losing a case, and, consequently, always desirous to settle or refer unless he saw his way clearly to a verdict. The anecdote he gives in illustration seems to me to speak rather to Thesiger's great industry and to a mind open to conviction.

[1] *Ante*, vol. i. 442.

winning on the last occasion by the bare majority of eight. It was with no small relief that at last, in July 1852, he found absolute security of tenure in Stamford town, where the Lord of Burleigh returned his two Conservatives without fear of opposition.[1]

[1] *Vide infra*, 356.

CHAPTER V

LIFE OF LORD CHELMSFORD FROM HIS ENTRY INTO PARLIAMENT TO HIS DEATH

1840–1878

THESIGER began Parliamentary life on the flood tide of Conservative reaction which, in July 1841, swept over the country. Without pushing himself forward he took a fairly frequent part in debate, and it was noted as a proof of his capacity that he adapted his style of speaking from the very first to the assembly of which he had become a member. There was a complete disappearance of the good-humoured assurance which had told with so many juries; and in point of acquaintance with the habits of the House of Commons, his maiden speech might have been delivered by an old stager with a dozen sessions at his back.

In April 1844 Sir Frederick Pollock succeeded Lord Abinger as Chief Baron, and his place as Attorney-General was filled by Follett. To the vacant Solicitor-Generalship Thesiger was appointed, to the no small chagrin of Mr., afterwards Sir Fitzroy, Kelly, one of his chief rivals in Westminster Hall. 'Mr. Solicitor,' now become Sir Frederick, entered upon his duties under unusual difficulties. Follett was in such indifferent health that he was forced to leave England for a milder climate; and his colleague was left to do the work of both law officers single-handed, while the point-blank refusal of the Duke of Marlborough to return him again for Woodstock kept him, for some weeks, out of the House of Commons. In this emergency he received, as I have

already mentioned,[1] most generous and considerate assistance from his old Newark antagonist, Sir Thomas Wilde.

In the spring of 1845 Follett came home to die.

I never had an opportunity, wrote Sir Frederick Thesiger,[2] of transacting any of the Government business with him. I felt his loss deeply, as we had always been on terms of great intimacy, and I could have served under him with perfect satisfaction, not only out of personal regard but also from the high admiration I entertained of his extraordinary ability. He was certainly a most consummate advocate—not eloquent, unless eloquence consists in saying exactly what ought to be said at the right moment, with a voice of great sweetness, an easy and persuasive manner of speaking, and a look which 'drew audience and attention' before he uttered a word. His legal arguments were most learned and able, and it was said that Lord Tenterden's great pleasure towards the close of his life was in listening to them.[3]

Thesiger was appointed to the vacant post in June 1845, Fitzroy Kelly, the 'Bar' of Mr. Merdle's dinner parties in 'Little Dorrit,' succeeding him as Solicitor-General. But the days of the Administration were numbered. Peel's determination to repeal the Corn Laws, announced publicly on January 27, 1846, had rent his party from top to bottom. Thesiger was convinced that if Sir Robert had called the party together prior to the opening of Parliament and explained frankly the nature of the crisis which had converted him, the great majority of those who afterwards followed Disraeli would have submitted to his guidance. The crash came on June 25, when a combination of Whigs and Protectionists placed the Government in a minority of seventy-three over the Irish 'Coercion' Bill. Sir Robert resigned, and Wilde was reappointed Attorney-General.

Thesiger continued to discharge the duties of that post until his successor was actually sworn in, and it

[1] *Ante*, vol. i. 447, and Chelmsford MS. [2] Chelmsford MS.
[3] Compare with this Campbell's tribute to Follett, *infra*, 190.

was during this interregnum that Chief Justice Tindal died unexpectedly at Folkestone on July 6. Had the event occurred a fortnight earlier Thesiger would have succeeded as of right to the 'Cushion of the Pleas.' But the prize fell to Wilde, and Sir Frederick had to bear the disappointment with what philosophy he could muster. No small consolation was afforded him by the following letter from his chief:

My dear Thesiger,—I must write one line. I should have been very sorry if you had not spoken to me as you did when I met you in Cavendish Square, for what you said only confirmed the impression which every communication I ever had with you left upon my mind—that, in advising the Queen to make you her Attorney-General, I not only placed in her service the man best qualified for it by his professional ability and fidelity to that service, but a gentleman of as honourable and high spirited a mind as ever influenced the conduct of a gentleman in public and private life. The only cloud that darkened my retirement from office (so far as my own personal feelings were concerned), was the almost contemporaneous succession of Sir Thomas Wilde to the Common Pleas,

Believe me, my dear Thesiger,
with real esteem, most faithfully yours,
ROBERT PEEL.[1]

Yet the position of an ex-Attorney-General, in the days before the ukase of 1892 had incapacitated the law officers from combining private with official practice, was not to be despised. Cut off from circuit, and declining to appear before common juries, Thesiger found himself overwhelmed with the best class of civil work.[2] Special retainers carried him all over England, and during the

[1] Chelmsford MS.

[2] The pleasant relations which subsisted between Thesiger and the judges before whom he practised were only once interrupted when, as Sir John Hollams narrates (*Jottings of an Old Solicitor*, 134), a painful scene was caused in the Exchequer by a passionate declaration on his part that undue favour was shown by Chief Baron Pollock to his son-in-law, Mr. Martin, who a few years later was himself elevated to the rank of a puisne in that same Court.

interval between 1846 and his elevation to the Woolsack there were few cases of importance at Nisi Prius in which his services were not secured on one side or the other. Of several of the most curious of these Sir Frederick has himself left a record, and the two following seem deserving of a brief summary.[1]

While still Attorney-General he had been retained by the ninth Earl Ferrers in an action for breach of promise of marriage, brought against that nobleman by Miss Smith, the daughter of a Warwickshire farmer, young, of attractive appearance, and romantic disposition. The defendant had recently married a lady in his own rank of life; his acquaintance with the plaintiff had begun and ended during his residence with a tutor in her father's village some years previously, and was of the slightest and most casual nature. He had neither seen nor corresponded with her since he came of age, and, as the date of the promise was alleged to be subsequent to that event, both he and his counsel went into Court in complete ignorance of the case which was to be sprung upon them.

Sir Fitzroy Kelly, who appeared for Miss Smith, tendered evidence of an active correspondence having taken place between her and his Lordship, the letters being full of expressions of the most ardent affection, with a constant reference to their engagement and the arrangements for their marriage. The young lady had shown the correspondence to her parents, together with books and jewelry and other gifts which she professed to have received from her fiancé. Letters purporting to come from Lord Ferrers had been received by Mr. Smith, and both he and his wife were firmly convinced of the existence of their daughter's engagement. The most extraordinary

[1] A case to which Thesiger makes no reference in his papers was that of the appeal of Abraham Hayward, Q.C., against his exclusion from the Bench of the Inner Temple. He appeared for Hayward (1845), but was unable to obtain any redress; the exclusion was due to a piece of personal spite on the part of Roebuck.

ingenuity was employed to give verisimilitude to the story. At that date neither plaintiff nor defendant were competent witnesses,[1] so Miss Smith could not be cross-examined, and, in spite of the tissue of absurdities and mis-statements revealed in the letters, the case looked black against Lord Ferrers. Happily for himself, however, he had preserved three or four out of a heap of anonymous letters with which he had been pestered, and his adviser had reason to suspect that the writer was none other than Miss Smith herself. The terms in which they were couched were entirely inconsistent with any idea of an engagement, and, indeed, with the whole tale that had been set up in Court. If they could be traced to Miss Smith, her case was gone. Thesiger was in extreme anxiety as to how this could be effected, but the plaintiff's mother extricated him from his difficulty.

I first put into her hands, he says, what we knew to be a genuine letter from the plaintiff to a friend, which Mrs. Smith positively denied to be in her daughter's handwriting. I thought from this she had come prepared not to admit any letter produced to her to be the plaintiff's. I therefore took one of the anonymous letters which began 'My dearest Washington,'[2] and, turning that part so as to be prominently seen, I presented it to her, when she immediately acknowledged it to be her daughter's writing. I dealt in the same manner with the other three letters, and proved them all in succession.

Sir Frederick was too good an artist to give away his secret before the proper moment had arrived; he allowed no indication of the contents of the letters to escape him, and left the jury and his adversaries in complete mystification as to the value and colour of the card up his sleeve.

When the plaintiff's case was closed, and I rose to address the jury, they were still in the dark as to the complete answer to it, which, by proof of the handwriting of the letters, I had it in my power to give. And I kept their attention alive and

[1] The law was not changed in this respect until 1851, 14 & 15 Vict. c. 99.

[2] The defendant's Christian names were Washington Sewallis.

their expectations on tiptoe, promising them the revelation of a grand secret, and tantalising them by approaching from time to time the very verge of disclosure, and then turning off to an observation on some suspicious circumstance in the evidence produced by the plaintiff. I believe I may venture to say that I never did anything better than this while I was at the Bar. I do not build at all upon the applause which followed the conclusion of my speech, for that is too common a tribute to forensic oratory to be of much value, but I do very highly esteem the fact that Cockburn, who was probably the most powerful and eloquent advocate of the day, and who was sufficiently interested, though not in the cause, to remain in Court, during my address to the jury, told me he would rather have made my speech than any he had ever heard at the Bar.

The contents of the letters, when they were at last put in evidence and read, came as a thunderclap to the counsel for the plaintiff; and on the following morning Sir Fitzroy Kelly, declaring that he was 'unable, at the present moment, to meet, or to explain, or to inquire into the facts connected with them,' elected to be non-suited.

The other case is the ejectment action of Smyth *v.* Smyth, tried before Mr. Justice Coleridge at the Gloucester Assizes in August 1853, in which the plaintiff alleged himself to be the son of Sir Hugh Smyth, Bart., formerly of Ashton Court in the County of Somerset, and Heath House in the County of Gloucester. Upon the verdict of the jury depended the right to property in these and other counties carrying a rent-roll of nearly 20,000*l.* a year. The *soi-disant* Sir Hugh turned out to be a certain Tom Provis, son of a Warminster carpenter, who had led a wandering and disreputable life, in the course of which he had lain under sentence of death for horse-stealing.

Except for the length of the trial and the absence of any attempt at physical identification, the case is almost on all fours with the Tichborne imposture.[1] Like the

[1] One of the real Roger Tichborne's relatives, on first hearing of the stranger from Australia, had thought him 'the greatest impostor of modern times except Tom Provis.'

famous 'Claimant' to the Hampshire baronetcy, Provis had contrived to enlist, in the assertion of his pretended rights, the feelings of many persons of education and intelligence. The tenants, and the local population generally, were all in his favour. And he had raised large sums from Israelitish gentlemen, secured, like Druce or Tichborne bonds, by a charge upon the estates when recovered. Sir Fitzroy Kelly had been originally retained for the plaintiff, but had returned his brief; a similar course had been adopted by Mr. Keating, Q.C.,[1] then leader of the Oxford circuit, Finally, at very short notice, Mr. Bovill, Q.C., afterwards Chief Justice of the Common Pleas, to whom it fell, strangely enough, in after years, to try the case of Tichborne *v.* Lushington, undertook the burden, and in an admirably lucid and well-ordered speech succeeded in presenting to the jury a coherent and plausible narrative. Space forbids the attempt to present even an outline of the trial, but the closing incident may be given in Thesiger's own words.

Monday, the first day of the trial, was mainly occupied by the opening speech and by witnesses to handwriting. On Tuesday the plaintiff gave his evidence in chief, and for the last three hours before the adjournment was under cross-examination by Thesiger, who, from an abundant *dossier*, was able to hit him hard, and high, and often. Provis was 'a mixture of flippancy and affected learning.' He asserted that he was a member of one of the learned professions, but in his correspondence he habitually used 'Nox' for Lord Knox, 'visicitude,' 'whome' for 'whom,' 'summersetshire,' 'sett asside,' together with other highly unconventional forms of spelling. Incidentally he claimed to have been a schoolfellow of Dr. Arnold's at Winchester, and to have been present as a guest of the Duchess of Richmond at the ball before the battle of Quatre Bras.

There was enough in the plaintiff's case alone to destroy all hope of a favourable verdict; yet, notwithstanding the

[1] Afterwards Justice of the Common Pleas (1859–1875).

inconsistencies and contradictions into which he had been drawn in his cross-examination, and the admissions which had been extorted from him, he maintained his ground with extraordinary coolness and self-possession, and it was only after the inextricable confusion in which he became involved in his attempted explanation as to the seals upon the forged wills that his courage and confidence began to fail. Of course, if the defendant's case had been opened and the overwhelming proof of the plaintiff's perjuries and forgeries had been laid before the jury, they could not have hesitated a moment as to their verdict. But the necessity for entering upon the defence was obviated by one of the most extraordinary incidents that ever occurred in a court of justice.

During his evidence on the first[1] day of the trial the plaintiff produced some trinkets having the appearance of being many years old, which he represented to have been jewels belonging to his mother, and to have been given to him by Davis, the steward of the Marchioness of Bath. Amongst them was a brooch, with the name of 'Jane Gooken' engraved upon it, and a ring with the crest of the Bandon family. On the following morning, just as I was going into Court, I received a telegram from London stating that there was a jeweller in Oxford Street who could give some important information respecting the family jewels. I desired the attorney to lose no time in communicating with the sender of the telegram, and proceeded with the cross-examination of the plaintiff. I was so occupied with it that I had forgotten the communication from London, when, after some hours spent in extorting confession after confession from the plaintiff, and when he was evidently fast breaking down,[2] a paper handed to me at the end of a javelin man's staff enabled me to deal him the punishing blow.

I reminded him of his production of the jewels the day before, and made him repeat his statement that they had been given to him forty years ago. I then said in a very solemn manner, 'Now, attend to me, did you on January 19 last apply to a person at 361 Oxford Street and desire him to

[1] It should be the second.

[2] He had been refreshed with brandy and water, and had begged to be allowed to leave the Court.

engrave the name of Jane Gooken upon the brooch, and the Bandon crest upon the ring.' The plaintiff, confounded by the unexpected question, and feeling that further struggling to maintain his fraudulent scheme was hopeless, answered in a subdued and despondent tone 'I did.' [1]

Thesiger was scarcely less affected than the wretched Provis. He sank into his seat overcome with emotion, in which triumph, pity, and relief were all blended. The case was at an end. Bovill withdrew as best he might, and on Sir Frederick's application the plaintiff was removed in custody. He was tried at the autumn assizes for forgery, and though, by this time, he had regained his effrontery and defended himself fiercely, he was convicted and sentenced to a long term of penal servitude. He died in prison.

During these years Thesiger was by no means idle in Parliament, and he was called upon by Peel and Sir James Graham to move the rejection, on June 24, 1850, of Roebuck's vote of confidence in the Whig Government with regard to the Don Pacifico case. The debate, which lasted for four nights, was memorable in many ways—memorable for the *Civis Romanus sum* of Palmerston, and for the first Parliamentary success of Cockburn, memorable above all as the last appearance in the House of Commons of Sir Robert Peel. The day was breaking as the greatest of all purely Parliament men left the scene of his triumphs and defeats; 'before sunset he was carried in pain and anguish over the threshold of his house in Whitehall Gardens.' Thesiger always cherished the recollection that Peel was seated next him when he rose to make his last speech, and that they were together in the lobby the last time Peel recorded his vote. He was one of those who had been privileged to penetrate beneath the shy and reserved exterior of the deceased statesman, and to know something of his real character. He bears strong testimony to the interest

[1] Chelmsford MS.

which Peel took in the fortunes of those to whom he was attached, and his constant readiness to interpose his good offices on their behalf.

After the death of their leader the chief Peelites ceased gradually to co-operate with the main body of the Opposition, but Thesiger now ranked himself definitely under the banner of Lord Stanley, who became Earl of Derby in 1851. He took a leading part in the debates on the Ecclesiastical Titles Bill, as spokesman of the True Blue school, who held that Lord John Russell's measure,[1] when transmuted from words into deeds, was utterly inadequate; and he carried against the Ministry, by large majorities, a string of resolutions embodying this view.[2] He was as strongly opposed to the admission of Jews to Parliament as to the establishment in England of the Roman Catholic hierarchy, and, a year or two later, he moved and carried by a majority of four the rejection of Lord John Russell's Bill for the modification of the Parliamentary oath.[3] In all matters of 'Church and State' Sir Frederick was a follower of Eldon, and, though a more tolerant generation may view his attitude with surprise and disappointment, there can be little doubt that at the time he was truly representative of the majority of his fellow-subjects.

In February 1852 Lord John was thrown out by Palmerston, and Thesiger resumed his place of Attorney-General in the Administration formed by Lord Derby; the defeat of the '*Who? who?* Government,'[4] however, on December 16 reduced him again to the ranks. Not long afterwards he was given the opportunity of quitting it by the not very tempting offer of a puisne judgeship. On March 13, 1854, as Sir Thomas Noon

[1] 14 & 15 Vict. c. 60.

[2] June 23 and July 4, 1851; and see Hansard, cxvi. and cxvii. *passim* and cxviii. 212.

[3] May 26, 1854.

[4] For the explanation of this nickname see Justin McCarthy, *History of our own Times*, ii. 181.

Talfourd was delivering his charge to the Grand Jury at Stafford, he

failed, fainted, and fell and lay silent,
Evermore silent they saw that covered his face from the gazer.
Gone to its God was the soul—and borne back the corpse to the lodgings;
Naked the one as it came, robed the rest in its scarlet and ermine.[1]

Within a few hours of receiving the news by telegram, Lord Chancellor Cranworth despatched a note to Thesiger asking him to fill the place so suddenly and so awfully vacated. Though thirty-six years of incessant labour at the Bar made him turn a longing gaze at the prospect of release, Sir Frederick had no hesitation in refusing. He had only missed the Chief Justiceship of the Pleas by twenty-four hours, and his standing in the political world, however clouded the Tory prospects, might still gain for him one of the greater prizes of the lawyer's ambition. Lord Cranworth had kindly and appropriately reminded him 'that the acceptance of a puisne judgeship does not of necessity exclude you from further aspirations.' But Rolfe's career had been without precedent, though it was not, as we shall see, to be without a parallel; and Thesiger, in Brougham's metaphor, declined to deprive himself of the horses which were to carry him to the next stage. None the less, he was conscious of the risk we have seen exemplified in recent years, of letting opportunity pass once too often. Speaking to his old friend Sir Lawrence Peel, Thesiger described, in an apt metaphor, 'the fate of an old man at the Bar,

[1] *Cornhill Magazine*, xix. 583 (November 1905). The signature beneath the lines 'C. J. D.' is an interesting reminder that other Oxford Circuit judges besides the author of *Ion* have wooed the Muses. Lord Chelmsford in his fragment of autobiography notes the curious coincidence that six years after the sudden death of Talfourd, to the very day, Baron Watson, the old Waterloo veteran, was taken with a fatal seizure in Court at Welshpool, shortly after charging the Grand Jury of Montgomeryshire.

upon whom every year that passes is opening the sight of fresh and eager candidates for distinction flying at the old cock of the walk.'

I have said nothing, hitherto, of his domestic life. In March 1822 he had married the youngest daughter of Captain William Tinling, niece of the gallant Major Peirson, the defender of Jersey. It was a union of pure affection, entered into at a period when his prospects at the Bar scarcely justified the step; a life of almost uninterrupted happiness, and a numerous family, had been the result. Of Thesiger's six sons the eldest had entered the Guards, and had served with distinction in the trenches before Sebastopol. The Crimean winter was one of much anxiety in the Thesiger household, but darker days were in store. One of the daughters had been married in 1851 to Colonel Inglis, a distinguished veteran of the Sikh wars, who was in command of the old 32nd (the Cornwalls) when the Indian Mutiny broke out in May 1857. The 32nd, recently arrived from the hills, formed the backbone of the Lucknow garrison, and by the dying wish of Sir Henry Lawrence, Inglis succeeded him in the command of the Residency and its freight of precious lives. For five long months his wife and three young children shared the perils of that immortal defence, and it was not until just on Christmas Eve that the news of the final relief by Sir Colin Campbell reached England.[1] It is now fifty-one years since that terrible summer, but there are many still amongst us who can remember the sickening suspense, followed too often by tidings which only confirmed the most fevered imagination. It is difficult to realise that the news of the Meerut outbreak on May 10 did not arrive in England till June 27, and that the horrors of Cawnpore were only learnt on September 15.

During the whole period of the siege Sir Frederick and Lady Thesiger were cut off from communication with those so dear to them, though one or two of the tiny

[1] The event itself took place on November 17.

notes, crossed and recrossed in minute handwriting, which were smuggled across the Sepoy lines, are still preserved among the family treasures. When the Long Vacation came, the parents, in their anxiety and trouble, wandered from place to place, keeping always in some neighbourhood where they might obtain the earliest intelligence. At last came the news that Havelock, after avenging the Nana's victims, was on his way to relieve Lucknow. No one doubted that he would repeat his former victories, and the Thesigers, with comparatively light hearts, accepted an invitation to Invercauld. Learning of their presence in the neighbourhood, Her Majesty had sent for them to dine at Balmoral, and the party was seated at table when a telegram was handed to the Queen, announcing that Havelock's little army, scourged by cholera and its communications endangered, had fallen back on Cawnpore.

I was sitting next the Queen, says the late Duke of Argyll, on her Majesty's other side was Lord Chelmsford.[1] In the middle of dinner a servant came behind the Queen's chair and passed one of the well-known red boxes into her Majesty's hand. The Queen at once slipped it under the tablecloth so as to be able to open it out of sight of Lord Chelmsford. He, however, was a man of very alert perceptions, and, although he gave no sign of having seen anything I saw the strain under which he kept his countenance unmoved. The Queen read the telegram underneath the tablecloth, and then in a gentle voice of sympathy said to Lord Chelmsford, 'Not relieved yet.' In his excitement he did not catch the word 'yet,' and he repeated, in a voice of great alarm, 'not relieved?' The Queen then laid special stress on the word 'yet,' and so mitigated, as far as possible, the painful anxiety of her guest.

It was a cruel disappointment, but hope was only deferred, and on December 23 the papers contained the joyful intelligence that Lady Inglis, as she had now become,

[1] His Grace (*Memorials*, ii. 86) is anticipating events by a year or more.

and the children were safe. The Queen, who had been much affected by the incident at her own table, ordered General Grey to despatch her immediate congratulations to Sir Frederick and his wife.

Her Majesty, said the concluding words of the letter, can quite enter into the different state of mind in which you will now sit down to your Christmas dinner from that which you would have been in had this blessed news been delayed another week.

Lady Inglis has recently [1] published her recollections of the siege; unhappily, the shipwreck of the 'Ava,' in which she and many others of the survivors of the Mutiny were embarked—'that strange appendix,' as it has been styled, 'to the tale of their calamities'—robbed her of the journal she had kept in the Residency. In the following year, however, some of her letters containing extracts from it were printed for private circulation, and the narrative was declared by a Quarterly Reviewer to be

that of a high-hearted English lady, testifying throughout the unselfish spirit which made her, at the last, refuse the use of the litter prepared to carry her from her place of trial, and walk forth with those whose sufferings she had shared, and whose sorrows she had lightened by her sympathy and her courage.[2]

Thesiger held his last brief in February 1858. The Whig Government had directed a prosecution against the directors of the Royal British Bank for issuing false and deceptive prospectuses and publishing fraudulent balance sheets.[3] Sir Richard Bethell, the Attorney-General, whose practice had been entirely confined to Courts of Equity, was unwilling to conduct the case in Court, though he is said by his biographer to have framed the indictment.[4] The Solicitor-Generalship was practically

[1] *The Siege of Lucknow, a Diary*, 1892.

[2] *Quarterly Review*, ciii. 505. [3] *Infra*, 203.

[4] Nash, *Life of Westbury*, i. 208. Memories of a certain Treasury prosecution conducted by the late Sir John Rigby, S.G., who was

vacant by the illness and impending resignation of Mr. Stuart Wortley, and application was made to Thesiger, who accepted the task on the understanding that he was not to be superseded in case of the appointment of a new law officer. He speaks of it as the most troublesome and laborious case in which he was ever engaged.

As I had taken upon myself the duty I resolved to devote my whole time and attention to the faithful discharge of it. I gave back all the briefs which had been delivered to me and directed no more to be received. That the dedication of my time to this one case was not more than enough will be believed when I state that it took me eleven whole days to read the papers through, and many days afterwards to separate what was material from a mass of immaterial statements. The fact is that the able solicitor by whom I was instructed, having been for many weeks employed in the investigation of the affairs of the Bank under the bankruptcy, thought that these proceedings might be of some importance, and I had to read them all through to discover that they had no bearing upon the prosecution. I was compelled at last to make out my brief for myself by selecting all that was material to be adduced in evidence, and some idea may be formed of the extent of my labours when I mention that my notes occupied seventy pages. The greatest interest was felt in the case—the Court of Queen's Bench was arranged by the directions of the Chief Justice (Lord Campbell) in order to accommodate the greatest number of persons, it was understood that the Prince of Wales was to be present, and the result of the trial was anticipated with eager expectation. It is no wonder in these circumstances that I should feel a little anxious as to my own performance of my duty. Most vividly I remember that on the morning of the trial I awoke at 5 o'clock and, the idea of the day's work rushing upon me, I suddenly felt as if my mind was a perfect blank upon the whole case. However, I soon recalled my scattered thoughts, and when I left my bed I found that I had recovered possession of all that I had previously remembered. I afterwards opened the case

equally unversed in the guiles of the criminal law, show how well Bethell was advised in performing the duty *per procuratorem*.

in four hours and a half, and had scarcely occasion to look at a single note during the whole course of my speech.[1]

Serjeant Ballantine, who was 'with' him, has declared that he never heard a finer effort than Thesiger's unfolding of the lengthy and complicated facts of the case.

While the trial was proceeding the political world was convulsed by the defeat and resignation of Lord Palmerston over the Conspiracy to Murder Bill.[2] To Thesiger this seemed to promise a return to his old office as Attorney-General, a prospect which he regarded with comparative indifference. On the evening of February 22, as he was sitting at dinner after a hard day with Lord Campbell and the Bank directors, a letter was brought in to him from Lord Derby.

Dear Sir Frederick (it ran), among the troubles and annoyances of forming a Government (and they are neither few nor trifling) one has occasionally at least the pleasure of being able to serve one's friends,[3] and I have not on any occasion received the Queen's commands with greater satisfaction than when I was authorised by her Majesty to offer to your acceptance, in the event of my forming a Government, of which I have little doubt, the Great Seal, of course with a seat in the House of Lords. Her Majesty's assent was given to my recommendation in the most cordial manner and with a very complimentary reference to your legal abilities. You have so long suffered professionally from your faithful adherence to your principles that it affords me the greatest pleasure to have the opportunity of thus placing in your hands the highest honours of the Bar, and, though your practice, like Brougham and Lyndhurst, has not been at the Chancery Bar, I have no fear of your reputation suffering in comparison with your predecessors. Lord St. Leonards

[1] Chelmsford MS.

[2] February 19, 1858.

[3] Lord Derby had given Thesiger a pleasant proof of his friendship by nominating him for an honorary D.C.L. degree on the occasion of his installation as Chancellor of the University of Oxford, April 27, 1853. By a curious slip of memory the recipient in his MS. assigns the distinction to the period when he was M.P. for Woodstock, and attributes it to the vicinity of that borough to the University.

declines resuming his seat there on account of his increasing age, and though he might perhaps have been persuaded to give us his services for a few months had we been in difficulties, yet I am sure he will be well pleased to be so satisfactorily replaced.[1]

An appropriate answer was at once returned, and Thesiger's next step was to summon his brother counsel in the Bank case to his house, and 'hint to them mysteriously' that he would probably be unable to make the speech in reply. In the morning, before the Court sat, he had an interview with Lord Campbell in the latter's private room, and announced his acceptance of the Chancellorship and his consequent withdrawal from the prosecution.

He was almost overcome by the intelligence, not from any regard for me, but because I had gained the prize upon which he had long set his heart.[2]

An hour or two later, as the Chancellor-designate was coming out from Lord Derby's house, he came suddenly upon Mr. Gladstone. They had been old colleagues under Sir Robert Peel, and now as they walked together round and round St. James's Square he vainly plied the former hope of the stern, unbending Tories with every argument he could think of to join the Conservative Cabinet.

Shortly after the new appointment had been made public Thesiger met, in Lincoln's Inn, Mr. Roundell Palmer, then at the height of his enormous practice at the Chancery Bar, who stopped to congratulate him.

We had both some difficulty in keeping our countenance, wrote Lord Selborne in after years.[3] If the place of Chief Justice had been vacant, he would have filled it with general

[1] *Vide supra*, 45.

[2] Chelmsford MS. It is rather amusing to read Campbell's comment on the appointment (*Life of Lord Campbell*, ii. 357): 'unfortunately he is by no means a well-grounded lawyer, but he is a very good fellow with a large store of mother wit. Everybody is well pleased with his elevation, and I dare say he will get on very decently.'

[3] *Memorials, Family and Personal*, ii. 333.

approbation, but nobody thought of him for Chancellor, and, when he was appointed, I think he himself shared in other people's surprise.

That the assumption was not altogether groundless Thesiger's own manuscript shows, for in common with the rest of the legal world, he had taken it for granted that Lord St. Leonards would return to the Woolsack. But what, to the end of his life, he regarded with the most surprise was the calm and absence of excitement with which he received the crown of his career.

I remember, he writes,[1] when I was made Solicitor-General, I never closed my eyes the whole night, lying tranquilly, but full of thoughts of my good fortune, while the possession of the highest prize in the profession did not occasion me the loss of a single hour's sleep.

The Lord Chancellor selected his title from Chelmsford, where in a stuff gown he had won his first great victory at the Bar. He had wished to take it from Woodstock, the first borough that he represented in Parliament, and the Duke of Marlborough raised no objection, but the intention was abandoned on his discovery that the title already belonged to the Portland family. The coincidence of his long-deferred good fortune with the happy release of his daughter, Lady Inglis, suggested to some of his friends that he might assume the style of Baron 'Luck-now.'[2]

He received the Great Seal on February 26, and was duly sworn of the Privy Council, taking his seat in the House of Lords a day or two later. Though formed of more seasoned material than his former Cabinet, Lord Derby's second Administration possessed by no means a superabundance of strength and talent; 'eleven gentlemen against all England' was one summary sentence in which it was dismissed. And Chelmsford was largely

[1] Chelmsford MS.

[2] 'At Suez I heard that the Derby Ministry were in and my father Lord Chancellor. I had previously heard that John was made a K.C.B., so good news seems to be pouring in upon me' (*The Siege of Lucknow*, 239).

indebted for his place in it to the Premier's reliance on his debating powers, a reliance which I cannot honestly say was altogether justified. His first political speech in the House of Lords was in successful opposition to his old bugbear, the admission of the Jews to Parliament.[1] In the course of it he crossed swords with the veteran Lyndhurst, now approaching his ninetieth year, who had always been an advocate of the Jewish claims.[2] Lord Stratford de Redcliffe, in the rounded periods of a bygone Parliamentary age, declared that the contrast between the combatants reminded him

> of a contest which I have read of in my younger days between two illustrious professors of an art for which this country was once as renowned as the nations of antiquity, a contest between a veteran professor of the pugilistic art, and a young competitor just entering it with all the strength and vivacity of youth.[3]

At the age of sixty-four the Chancellor may well have doubted whether this was altogether a felicitous compliment.

Lord Chelmsford's want of acquaintance with the practical work of the Equity side was a grave disadvantage to him as a Chancery Judge. But his industry, his native acumen, and his resolve to do justice, were as conspicuous on the Bench as at the Bar. Counsel found him a courteous and attentive listener, and the extreme lucidity with which he summed up the arguments on either side, and expressed his own view of the case, extorted general admiration. Sitting in the Court of Appeal he usually had one or both of the experienced Lords Justices at his side, and he enjoyed the advantages of the case having been thoroughly thrashed out in the Court below and of its being presented to him in condensed and

[1] Hansard, cxlix. 1758.

[2] *Ante*, vol. i. 61. On Lyndhurst's death, in October 1863, Lord Chelmsford was nominated to succeed him on the governing body of the Charterhouse.

[3] *Aeneid*, v. 365.

LORD CHELMSFORD

From a painting by E. W. Eddis in the possession of the present Peer

polished form. He devoted his vacations, he tells us, and such time as he could spare during term, to a severe course of reading in the reports and text books, and he relates with satisfaction that during his first tenure of office only two of his decrees were reversed. 'He performed his part in the Court of Chancery as well as most common law Chancellors,' is the moderate encomium of Lord Selborne, 'and there, as everywhere else, his tact, kindliness, and courtesy made him popular.'

The Derby Cabinet fell in April 1859, and Lord Chelmsford resigned after fourteen months of office. During that period no great amount of patronage fell to his lot, but the only judge he placed on the Bench, Mr. Hugh Hill of the Northern Circuit, was universally regarded as an excellent appointment. Professional opinion was by no means unanimous over the elevation of Samuel Warren, Q.C., so often quoted in these pages, to be a Master in Lunacy,[1] but the author of 'Ten Thousand a Year' discharged his duties to the general satisfaction for a quarter of a century. While Chelmsford was still Lord Chancellor the Great Seal of England became worn-out, and a new one was ordered. Before it was completed Lord Campbell had succeeded to the marble chair, and a question arose as to whether the 'defaced' seal was the perquisite of the incoming or the outgoing Chancellor. Lyndhurst was able to supply a precedent. The Great Seal of George IV., rendered obsolete upon the succession of his brother, had been split into halves by order of William IV., and these, mounted in a couple of massive silver salvers, had been presented, one to Lyndhurst, the other to Brougham. Her Majesty was graciously pleased to follow the precedent in every

[1] 'Half a lunatic and half a lawyer' was the somewhat bitter phrase in which Chelmsford is said to have described his nominee. He had originally given the post to his son-in-law, Mr. W. F. Higgins, but the latter's connection with the legal profession was so slight that, in deference to public opinion, the Chancellor very wisely withdrew the nomination. His conduct was contrasted a few years later with that of Lord Westbury in somewhat similar circumstances.

respect, and Campbell generously waived the first choice.[1]

Of the years which intervened between Lord Chelmsford's first and second Chancellorship there is little to be recorded. He sat regularly at the hearing of Appeals, both in the House of Lords and in the Privy Council. Here his judicial qualities, which were very considerable, had better scope than in the unfamiliar arena of Lincoln's Inn. He would have been happier had he found a more congenial colleague than Lord Westbury, who succeeded Campbell as Chancellor in 1861. 'Each,' says Mr. Nash,[2] 'had the faculty of rousing what have been happily termed the travelling acids in the system of the other.' They were constantly in conflict on the floor of the House, and the mutual antipathy brought down, once at least, upon Lord Chelmsford's head, 'a pellucid calm flowing stream of vitriol which lasted for about an hour.'[3]

In June 1866 Lord Derby became Prime Minister for the last time. Shortly before the final defeat of Lord Russell's Government the Conservative leader had asked Lord Chelmsford whether, in the event of his being again called upon to form an Administration, the latter would have any objection, after occupying it for a time, to relinquish the Woolsack in favour of Sir Hugh Cairns, receiving in exchange some high office such as President of the Council. Chelmsford replied that he should be quite ready to do anything which would help to strengthen the party. But he stipulated that his resignation should be so arranged 'as not to be ascribed to inefficiency, or in any way to lower his character in public estimation.'[4]

His second tenure of office lasted for rather more than eighteen months, during which he showed no

[1] *Life of Lord Campbell*, ii. 388.

[2] *Life of Lord Westbury*, ii. 37.

[3] Hansard, clxv. 1719. 'A Daniel come to judgment,' said an admirer of Westbury in Chelmsford's hearing. 'No, not a Dan, only a Bethel,' was the comment.

[4] Chelmsford MS.

diminution of vigour or industry in the discharge of his duties as Chancellor. Lord Derby had never reverted to their conversation, though Lord Chelmsford was fully prepared to carry out his part of the bargain, when suddenly the blow descended. As the Prime Minister's health began to fail it was more and more apparent that the future of the Conservative party lay with his lieutenant in the House of Commons. Between Lord Chelmsford and Disraeli there had never been much liking or any real cordiality. Thesiger had been a follower in succession of Peel and of Lord Derby. He must have resented the sarcasm and invective which Disraeli had lavished upon one whom he venerated so highly as Sir Robert, and his own persistent opposition to the removal of the Jewish disabilities may not improbably have roused the umbrage of the descendant of the Chosen People. Gossip of course was rife, and it was asserted that Lord Chelmsford had spoken quizzingly of some eccentricity of dress on the part of Lady Beaconsfield, the one sin for which, in her husband's eyes, there was no forgiveness.

On February 19, 1868, when Lord Derby's resignation, though imminent, was completely unsuspected by his colleagues, the Chancellor was astonished to receive the following letter from Mr. Disraeli.[1]

Dear Lord Chancellor,—After all, I regret to observe that Mr. Justice Shee is no more. The claims of our legal friends in the House of Commons, supported as they are by much sympathy on our benches, must not be treated with indifference, and therefore I venture to express a hope that you will not decide on the successor of Mr. Justice Shee with any precipitation.

Yours very faithfully,
B. DISRAELI.

[1] It may be mentioned that Lord Chelmsford always spells the name D'Israeli, a signature which the great Benjamin had carefully discarded. Most of the 'older statesmen'—e.g. Sidney Herbert—did the same, and Lord James of Hereford still does so (*Journal of the Society of Comparative Legislation*, N.S. 2, 201).

'I cannot describe,' wrote Lord Chelmsford afterwards, 'the painful impression produced upon my mind by this dictation of the mode in which the highest duty of a Chancellor, that of selecting fit men for the Judicial Bench, was to be performed.' And his indignation was not lessened by the conviction that the Conservative lawyer whom Disraeli had in his eye was Mr. Huddleston, Q.C., of the Oxford Circuit, and M.P. for Canterbury, a distinguished advocate who was made a Baron of the Exchequer seven or eight years later by Lord Cairns, but who was the last man whom Chelmsford was disposed to select at this juncture.[1] The Chancellor answered the letter

by stating my views of the sacred character of the trust, that fitness and not politics ought to govern me in the choice of a judge, and that I would not suffer the smallest interference with my judicial appointments, the whole responsibility of which I alone must bear.

And in this spirit he proceeded to offer the vacant post first to Mr. (afterwards Lord Justice) Mellish, secondly to Mr. Russell Gurney, the Recorder of London, and, on their successive refusal, to Mr. James Hannen, then junior counsel to the Treasury and known only to the Chancellor by his professional reputation. It is not for me to sing the praises of Lord Hannen, one of the greatest judges and most striking personalities of his time; but so unexpected was the offer that, when the Chancellor's officer handed him the fateful missive at the Guildhall, where he was engaged in a case, he thought it was a practical joke on the part of some of his brethren, and it was a long time before he could be convinced to the contrary.[2]

[1] 'Utterly unfit to be a judge' (Chelmsford MS.)

[2] Chelmsford MS. It is a curious instance of how treacherous memory can be, that my old and kind friend, the late Judge William Henry Cooke, a man of most portentous and accurate recollection, used to relate a version of the Chelmsford-Disraeli embroglio which is, on the face of it, at variance with fact. According to him the cause of offence was the appointment of Sir Charles Selwyn to be a Lord Justice without consulting the Ministerial whips, and the ensuing

On February 25, it was rumoured that Mr. Disraeli had succeeded Lord Derby as Prime Minister. Lord Chelmsford heard the news in the course of a chance conversation with Lord Malmesbury in the House of Lords. The same evening he received the following letter from the Premier :

Dear Lord Chancellor,—The announcement in Parliament [1] has informed you of the accepted resignation of Lord Derby and of the office which the Queen has confided to me of forming a new Government.

My first wish is, as far as possible, to recall to the management of affairs my former colleagues, but there are some obstacles to this course, and the principal one is found in the House over which you preside.

If Lord Derby, in his time, was so sensible of the weakness of our party in debate that he was constrained to submit to yourself an arrangement which, though delayed, he still contemplated, I am sure you will feel that, without Lord Derby, I have no option but to have recourse to his plan among others of strengthening her Majesty's Government in the Upper House of Parliament. If, therefore, for this reason and no other, it is not in my power to submit your name for the custody of the Great Seal to the Queen in the list of the new Ministry, I can assure you it would afford me sincere gratification if you could suggest to me some other mode by which her Majesty might testify her sense of your services.

Believe me, yours sincerely,

B. DISRAELI.[2]

rejection of Mr. (afterwards Baron) Cleasby, the Government candidate for the University of Cambridge, in favour of an 'Independent' candidate, Mr. Beresford Hope. Of course the Lords Justices are appointed not by the Chancellor but by the Prime Minister.

[1] Hansard, cxc. 1095.

[2] Chelmsford MS. 'The Great Educator,' said Mr. Punch, 'had no difficulty at all in forming a Government, and the old Ministry became the new one with the exception that we have a new Premier, a new Chancellor, Lord Cairns (the able-bodied seaman, Chelmsford, not being exactly "pressed" on board the Benjamin Disraeli), and the most stalwart Chancellor of the Exchequer that ever carried a Budget, Mr. Ward Hunt.'

The old lawyer, who had faithfully served his party through the vicissitudes of thirty years, was sorely wounded. He had no cause of complaint that Disraeli, to whom he owed nothing, and whom he personally disliked, should have chosen Sir Hugh Cairns; nor did he cavil at the selection of one whose superiority, both as a debater, and an Equity judge, he most generously admitted. But nothing had been left undone, as it seemed to him, to make his supersession as painful as possible. The curt tone of Disraeli's letter, the failure to give the intimation which was due to him, at least as Speaker of the House of Lords,[1] the implied slur which he had bargained with Lord Derby should in any case be avoided—all combined to make the strongest demand on his fortitude. Nor, as we are regretfully compelled to add, was his fall lightened by any kindly or sympathetic utterances on the part of Lord Derby and his former colleagues.

Even so the cup was not full.

I certainly should not have supposed, he writes,[2] that my services as Chancellor deserved any recognition had it not been for Mr. Disraeli's letter, and I assumed that I should receive, as a permanent token of her Majesty's approbation, the only reward which could properly be bestowed upon an ex-Chancellor, a step in the peerage. I was not particularly anxious upon the subject, and, therefore, I was amused rather than annoyed when I received a notification from the Premier that her Majesty had been pleased to bestow upon me the Grand Cross of the Bath. I lost no time in respectfully declining the distinction, which was entirely out of character with the services of which it was meant to testify the approval.

In refusing the proffered salve to wounded honour, Lord Chelmsford's conduct was thoroughly endorsed by the legal profession; 'he might just as well have been

[1] There seems to be a fatality which makes Ministerial changes the vehicle for what is wounding and humiliating (see Mr. Andrew Lang's *Life of Sir Stafford Northcote*, ii. 279).

[2] Chelmsford MS.

offered the Victoria Cross,' said someone bluntly. On February 29 he delivered up the Great Seal to his Sovereign, not without a slight allusion, he tells us,[1] to the cavalier treatment which had been meted out to him.

Lord Chelmsford carried with him into private life the esteem and respect of all who knew him. His genial, kindly disposition, and his frank cordiality of manner had endeared him to the Bar; and the public at large had been impressed by the shrewdness and honesty of his judgments and the consistency of his political career. He continued to take an active part in the judicial work of the House of Lords and the Privy Council until advancing age forbade it. He at last withdrew on the ground that 'stooping, he could no longer be an upright judge.' Not long before the end the late Mr. H. C. Rothery, who had recently been appointed Wreck Commissioner, met him walking down Whitehall in company with another aged judge. 'Are you going to sit on us?' said the ex-Chancellor, with a flash of his old jocose humour. Another well-known saying dates from an earlier period. In an important division on the Irish Church Bill, Samuel Wilberforce separated himself from his episcopal brethren with whom he had hitherto been voting. 'Why,' said one of the Temporal Peers, 'the Bishop of Oxford is going the wrong way.' 'No,' answered Lord Chelmsford, 'the way to Winchester,' to which See, about to be vacated by Sumner, Wilberforce was preferred by Mr. Gladstone in the course of the next few weeks.

In 1875 he lost his wife, the partner for fifty-three years of his joys and sorrows, and as some small distraction in the hours of his bereavement, he employed himself

[1] Chelmsford MS. According to Bishop Wilberforce (*Life*, iii. 242), 'When Chelmsford surrendered the seals he held them back a minute, and said, "I have been used worse than a menial servant. I have not had even a month's warning."' At a somewhat later date, when he had recovered his equanimity he is reported to have distinguished between the old and the new Administrations as 'the Derby' and 'the Hoax.'

in the composition of those 'Reminiscences' to which I have been so largely indebted; the last lines were written very shortly before his death. The following modest and characteristic sentence may be quoted from the introduction:

> If it should ever be thought worth while to publish the following details of my life, they may, perhaps, be not altogether unprofitable as affording an example of what abilities of no very high order accompanied with unremitted industry and perseverance, and aided by a concurrence of favourable circumstances, may ultimately accomplish.

He passed away on October 5, 1878, and was succeeded by his eldest son, the late General Thesiger, who, after a long and distinguished service, ended his career as Gold Stick to the King. *His* son, the third Baron Chelmsford, after winning high honours at Winchester and Oxford, on the cricket field, as well as in the Schools, is now serving the Crown as Governor of Queensland.

The sunset of the Chancellor's life was brightened by the conspicuously rapid rise of his third son, Alfred, who, after a short period of extraordinary success in his father's profession, was made in 1877 a Lord Justice of Appeal straight from the Bar, at the age of thirty-nine. The appointment lay with the Prime Minister, and many saw in it an act of reparation on the part of Lord Beaconsfield for the wound he had inflicted in 1868. We may be sure that the Premier's choice was no less acceptable to Lord Cairns, who had been the innocent instrument in Lord Chelmsford's supersession. Lord Justice Thesiger more than justified the honour that was thus bestowed, but the shadow of an early death hung over him, and he passed away on October 20, 1880, 'inheriting,' as was well said, 'and carrying on a reputation for the integrity and honour of a *preux chevalier*.' [1]

[1] *A Generation of Judges*, 114.

CHAPTER VI

LIFE OF LORD CAMPBELL DOWN TO HIS ELECTION FOR STAFFORD

1779–1830

JOHN, BARON CAMPBELL, was born at Cupar in Fife on September 15, 1779. The son of a minister of the Church of Scotland, he would often quote with approbation the saying of David Wilkie, 'born in the manse we all have a patent of nobility.' While claiming descent from the Earl of Argyll who fell at Flodden, and, through his Hallyburton mother, from the Regent Albany, he owed nothing to birth or fortune save a clear head, indomitable perseverance, and an unbounded capacity for hard work. There was an elder brother and five sisters, and though the Rev. George Campbell's emoluments were somewhat in excess of the average ministerial stipend, little margin was left after the necessaries of life had been provided. Mrs. Campbell died when her second son was in his fourteenth year, and he has paid an affectionate tribute to her memory in his autobiography.[1]

At the age of seven he began his education at the Cupar grammar school, and when only eleven he accompanied his brother George to St. Andrews University, each of the children being in the enjoyment of a small bursary,[2] which aided substantially in defraying the expenses of the six months' session. At the end of four years John Campbell was entitled to the degree of

[1] *Life of Lord Campbell*, i. 19.

[2] John's was 10*l*. per annum, his brother's 20*l*. Among their classmates from the beginning was Thomas Chalmers, pioneer of the Free Church of Scotland.

A.M. He had studied the Humanities and mathematics, rhetoric and logic, natural and moral philosophy, but the mixture of ages and attainments in the classes, together with the perfunctory nature of much of the teaching, must have rendered the curriculum almost farcical in the case of a boy of fifteen. Partly at Cupar and partly at St. Andrews he got a good grounding in Latin, but in after life he often regretted the foundation of solid and exact learning, which was then practically unattainable north of the Trent. Nevertheless the Homeric motto over the public Hall of Disputation at his Alma Mater had sunk deep into his heart;[1] *αἰὲν ἀριστεύειν*, 'ever to excel,' was the maxim and guiding star of his career, though translated occasionally into action which might have made the Lycian warrior 'stare and gasp.'[2]

'Leetle John,' as his old schoolmaster used to call him, had not yet done with St. Andrews. He was destined for the ministry, and four years' study at a divinity hall was required by the General Assembly. He migrated from St. Salvator's College to St. Mary's, which was devoted exclusively to theology and Hebrew, and to these studies he surrendered himself until he had attained the age of eighteen. His diligence led to private pupils and to pleasant summer vacations on the Tay. He pleads guilty to a very moderate acquaintance with the Hebrew and Greek tongues, nor did the dry bones of divinity possess any attraction for him. But he accumulated a good store of miscellaneous reading, and then, as ever, his conduct was exemplary. Like the Highland Writer in 'Catriona,' he was fond of 'a turn at the golf on the Saturday at e'en,' and without being an enthusiast, he always thought that game 'superior to the English cricket, which is too violent and gives no opportunity for conversation.'[3] Nor was he unduly censorious

[1] *Lord Campbell's Speeches*, iv.

[2] Campbell makes Tydeus address the words to Diomede; Homer assigns them to the father of Glaucus (*Iliad*, vi. 208).

[3] *Life of Lord Campbell*, ii. 26.

with regard to the less innocent diversions of his college days.

I cannot help thinking, he records in his autobiography, that an occasional *booze* has a favourable tendency to excite the faculties, to warm the affections, to improve the manners, and to form the character of youth.

It is improbable that the finances of the St. Andrews students allowed of any very harmful profusion at the sessional *Gaudeamus*.

He had barely attained his eighteenth year when he received, through one of the professors, the offer of a tutorship in London. His father consented with reluctance; he may well have felt that the joys and excitements of the southern metropolis would prove a distraction rather than a preparation for the humble round of a moorland parish. But John was on fire for the sight of London and the great world, and in March 1798 he found himself installed in the Clapham residence of Mr. Wedderburn Webster. His pupil, a boy of nine or ten, was that James Wedderburn Webster who in after years became the friend of Byron, and whose wife, the beautiful Lady Frances Annesley, attracted the roving affections both of the noble poet and of the Duke of Wellington.[2]

Campbell remained a 'bear leader' for two years; the duties were light, and were, no doubt, discharged with his customary thoroughness, but they were in no sense congenial, and his position grew more and more irksome. His ample leisure admitted of a great deal of study, and he obtained introductions which led to

[1] *Life of Lord Campbell*, i. 16.

[2] Lady Frances was at Brussels during the campaign of 1815, and was the recipient of almost hourly bulletins from the battlefield of Waterloo. In the following year (Feb. 1816) her husband's old tutor assisted, as junior counsel, in extracting 2,000*l.* damages from the *St. James's Chronicle* for a libel of which she and Wellington were the joint victims (*Life of Lord Campbell*, i. 46, 333. Prothero's *Byron*, ii. 2 *n*).

literary work. The stage cast its fascination over him, but it was his first visit to the House of Commons that sealed his fate. He had been lucky enough to obtain a member's order for the night of one of the great debates on the abolition of the slave trade.[1] He heard Wilberforce and Canning, Pitt and Fox, and in that hour the Kirk lost a possible Moderator of her General Assembly. He felt no vocation for the pastoral office, and his ambition had been fired. In the profession of the law he discerned a way by which the portals of St. Stephen's might eventually be flung open to the raw and friendless lad from Cupar. Ways and means, however, seemed to present an insuperable difficulty. He had abandoned his tutorship, and he was reluctant to apply to a father whose fondest wishes he was conscious of having thwarted. He had sedulously delivered the letters of introduction to his fellow countrymen with which he had been equipped, but they had yielded little that was either substantial or encouraging. He was rescued from his dilemma by a reportership on the 'Morning Chronicle,' procured for him by the influence of an old St. Andrews acquaintance, Mr., afterwards Serjeant, Spankie.[2]

Early in 1800 Campbell took a couple of rooms, 'up four pair of stairs' in Tavistock Row, accommodation for which the future Lord Chancellor of England paid nine shillings a week. In the autumn he moved into Stanhope Street, Clare Market, and at the beginning of the new year he secured a small set of chambers in Old Buildings, Lincoln's Inn, having entered that society in the previous November. His work on the 'Morning Chronicle' afforded him abundant occupation; parliamentary and legal reporting, dramatic and literary criticism, nothing came amiss to his pen. And though we may search the pages of his journal in vain for any indication that he was liberally treated, he was not the stuff of which submissive hacks are made. 'If

[1] April 3, 1798. *Life of Lord Campbell*, i. 38.
[2] See *ante*, vol. i. 114 *n*.

Campbell,' remarked his employer, Mr. Perry, in after years, 'had been engaged as an opera dancer, I do not say he would have danced as well as Deshayes, but I feel convinced he would have got a higher salary.'[1] And no man ever lived who knew how to extract better value out of a shilling.

When Parliament was not sitting he read law in his chambers, and he was a regular occupant of the long abolished Students' Box in the Court of King's Bench, and at the Guildhall, where Kenyon would condescend to explain the issue to all and sundry of its tenants.[2] The nearer he became acquainted with the life of the Bar, the more firmly he became convinced that it was a career open to talent, and he felt a just confidence in his own possession of the faculties requisite for success. But he realised that an end must be put to his desultory studies and to his divided allegiance. His father's generosity had provided the caution money which it was necessary to deposit at Lincoln's Inn, and now his brother George, who held a good appointment in the medical service of the East India Company, came to his assistance. He not only found the hundred guineas for the pleader's fee, but, during the years of struggle that followed his purse was ever at John Campbell's disposal. How often has it been the kindly custom of brothers in the Golden East to minister to the wants of those at home; but never was money better laid out than in this instance, and the fraternal benevolence was repaid with an affection that ceased only with life itself.

Armed with a letter of introduction from Sir James

[1] A full and spirited account of the dancing lessons which Campbell actually did take when his practice allowed him to go into society will be found in his *Life*, i. 296.

[2] The amusing but indecorous anecdote which he relates of Lord Kenyon (*Lives of the Chief Justices*, vol. iii. 85, of the library edition, in which alone it is to be found) is a reminiscence of those days, probably a tradition of the Bar. Campbell's most exciting recollection was the trial and sentencing of Despard by Lord Ellenborough, but his earliest memory was the trial of Hadfield before Lord Kenyon (*Lives of the Chief Justices*, iv. 107, 239).

Mackintosh, Campbell obtained a desk in Tidd's chamber, and on January 1, 1804, he took the second regular step towards the Woolsack. Mr. William Tidd's famous debating society has been noticed more than once in these pages[1]; of Tidd himself I seem to detect the lineaments in Mr. Weasel, the pleader described by Samuel Warren, though I fancy the portrait, taken as a whole, is composite:

He was a ravenous lawyer, darting at the point and pith of every case he was concerned in and sticking to it, just as would his bloodthirsty namesake at the neck of a rabbit. In *law* he lived, moved, and had his being. In his dreams he was everlastingly spinning out pleadings which he never could understand, and hunting for cases which he could not discover. In the daytime, however, he was more successful. In fact everything he saw, heard, or read of, wherever he was, whatever he was doing, suggested to him questions of law that might arise out of it. At his sister's wedding (whither he had not gone without reluctance) he got into a wrangle with the bridegroom on a question started by himself, whether an infant was liable for goods supplied to his wife before marriage; at his grandmother's funeral he got into an intricate discussion with a puzzled proctor about *bona notabilia*, with reference to a pair of horn spectacles, which the venerable deceased had left behind her in Scotland, and a poodle in the Isle of Man (*sic*); and at church the reading of the parable of the Unjust Steward set his devout, ingenious, and fertile mind at work for the remainder of the service as to the modes of stating the case nowadays against the offender, and whether it would be more advisable to proceed civilly or criminally; and if the former whether at law or in equity. He was a hard-headed man, very clear and acute, and accurate in his legal knowledge; every other sort of knowledge he despised, if indeed he had more than the faintest knowledge of its existence.[2]

[1] *Ante*, vol. i. 10, 384.

[2] *Ten Thousand a Year*, chap. xx. Lord Campbell declares that of all the lawyers he had ever known, Tidd possessed the finest analytical head; 'if he had devoted himself to science I am sure he would have earned great fame as a discoverer' (*Life of Lord Campbell*, i. 143, 149; *Lives of the Chancellors*, vii. 164, *n*).

Here was fine browsing for a hungry sheep, and Campbell availed himself of it to the full. The idleness of his fellow pupils filled him with encouragement, though he owns to some natural pangs as the party separated in the evening, 'they to feast at a tavern, to go to the opera, or to shine at a ball; I to slink into a cook's shop and to spend the night in drowsily poring over a book.' [1]

But these regrets were soon put from him; *αἰὲν ἀριστεύειν*! There is a little touch of character in the confession that he should work much harder if it were not for the fear of 'becoming proverbial as a fagger,' but he was not the man to waste his opportunities. Before the twelve months were over, Tidd's principal 'devil' elected to start business on his own account; Campbell volunteered to supply his place, and a bargain was struck by which he undertook to remain with his master for an honorarium of 100*l*., a pleasant reversal of the usual pecuniary relations.[2]

During these years, in spite of arduous labour and occasional despondency, he had managed to extract a good deal of enjoyment out of life in London. Such society as Scotch introductions and professional acquaintance could bring him, regular attendance at 'spouting societies and the play,' where he still reported for the

[1] This description must be taken with some caution. Copley, Pepys, and Denman had been his immediate predecessors at Tidd's, and the standard is not likely to have depreciated to the extent which he suggests. Campbell gives a different and a pleasanter picture a little further on (*Life*, i. 165). *Vide* also *ante*, i. 384. Campbell relates that one of the pupils, the idle apprentice, I imagine, rather than the industrious, began to versify Tidd's practice:

> 'Actions are all, and this I'll stick to,
> Vel ex contractu vel delicto.'

[2] In his life of Thurlow (*Chancellors*, vii. 164 *n*), Campbell tells the story in a form slightly different from the version I have quoted in the text from his own *Life*, i. 159. 'When at the end of my first year he discovered that it would not be quite convenient for me to give him a second fee of 100 guineas, he not only refused to take a second, but insisted on returning me the first.'

'Chronicle,'[1] 'boozes' now and again with Spankie and other friends who combined law and the arts with journalism—these were his recreations; and a frequent member of his modestly convivial circle was another distinguished emigrant from the kingdom of Fife in the shape of David Wilkie, the painter.

His vacations were spent, when possible, under the roof of his father's manse, but he records trips to the South Coast, and through the midland counties, and one never-to-be-forgotten visit to Cambridge in company with a Fellow of Christ's, where the sumptuous living in hall and combination room filled the *alumnus* of St. Andrews with various reflections not all of a flattering character. He thought grimly on his own two meals, 'one of tea and plain bread and butter, the other of buttock of beef and a pint of porter;'[2] but he had a stout heart and a canny tongue, and we may be sure that no word of self-pity or amazement escaped him.

In the course of the short-lived Peace of Amiens he had made a flying trip to Paris, where he had the fortune to see the First Consul, and the equivocal privilege of being introduced to Tallien and Barère, the former of whom conversed with equal *sang-froid* of the September massacres and the amiable qualities of his divorced wife.[3] Campbell had no cause to love Napoleon; the renewed outbreak of war robbed him of a lucrative travelling tutorship, and the camp at Boulogne drove him, to the loss of time and money, into the ranks of the volunteers. He shouldered his 'Brown Bess' in

[1] Campbell's career as a dramatic critic only terminated a few months before his call to the Bar. He had been detained so late over one of Tidd's difficult pleas that he missed the performance of *Romeo and Juliet* at Covent Garden, and for the first and only time he declares (*Life*, i. 178), wrote a conjectural criticism. Unluckily Cibber's version of the last scene had been substituted for Shakespeare's, and exposure was only averted by the providential discovery of this fact from a chance acquaintance at the Cider Cellars. Campbell managed to reach the office in time to rectify his mistake, and all ended well, but he took the incident as a warning against the pursuit of two incompatibles.

[2] *Life of Lord Campbell*, i. 172. [3] *Ibid.* i. 101.

the Bloomsbury and Inns of Court Association, otherwise known as the Devil's Invincibles, went through his exercise in the grounds of the Foundling Hospital, and was allowed, he tells us, to be a very steady and alert front-rank man.[1] The alarm in London was as genuine as on the coast of Fife or Dorset, and New Year's Day 1804 found Campbell so persuaded of the imminent landing of the French as to hesitate about paying Tidd the fee which some battle of Dorking or Blackheath might render a mere waste of money.

As the time drew near for his call he was seized with qualms as to severing his connection with Tidd. But the drudgery of plea-drawing was becoming more and more distasteful; Tidd showed no signs of relinquishing business to a successor,[2] and he resolved to take the plunge. His call was moved by Sir Vicary Gibbs, and on November 15, 1806, John Campbell, Esq., became a barrister of Lincoln's Inn. He was thoroughly versed in the subtleties of pleading, an accomplishment which implied a wide knowledge of case law, and as Tidd's *alter ego* he had been introduced to a good number of London solicitors; otherwise he was entirely destitute of 'connection,' and any hopes he had founded upon Tidd's good offices were destined to disappointment. It is amusing to find him convinced that diffidence was the main obstacle which he would have to overcome. The appointment of Erskine as Chancellor in February 1806 had raised high the hopes of all the Scotchmen in London.

[1] *Life of Lord Campbell*, i. 128, 133. He preferred the Bloomsbury Association to the Temple Corps, the genuine 'Devil's Own,' on the ground of Erskine's inefficiency as a commanding officer (*cf. Lives of the Chancellors*, viii. 267). The modern Devil's Own, in which for many years the writer trailed a pike under Captain, now Mr. Justice, Rolls Warrington, claims descent from both battalions. As these lines pass through the press it has exchanged its ancient title of the 14th Middlesex for that of the 27th battalion County of London Regiment (Inns of Court). It would be a graceful compliment to the distinguished lawyer under whose auspices the change has been effected if in the future the corps were to be known as Haldane's Own.

[2] Tidd survived until 1847: in 1813 he was called to the Bar, but he still remained *par excellence* a pleader.

His Lordship had been a classmate of the Rev. George Campbell at St. Andrews,[1] and Campbell lost no time in applying to him, through Tidd,[2] for a Commissionership of Bankrupts, but any expectation of preferment from this quarter was cut short by the dismissal of the Ministry of All the Talents in March 1807.

Installed in chambers of his own in the Temple, the next thing was the choice of a circuit. He joined the Home, then comprising Hertfordshire, Essex, Kent, Sussex, and Surrey. The proximity of the circuit towns to London rendered it the cheapest and most convenient of the six,[3] and it attracted always a goodly proportion of the leading figures at the Bar, of whom Garrow, 'the tame tiger,'[4] Shepherd, and Best were at this period the most conspicuous ornaments. Campbell was duly elected to the mess, and in the enjoyment of good wine and good company found temporary consolation for the lack of briefs. His naïve satisfaction in mixing freely and on terms of equality with men of 'learning, wit, and breeding,' finds rather pathetic expression in his letters to the old minister at Cupar, and throws a light on the struggles of his solitary life in London.

One of the judges was Mr. Justice Heath, the man who would never be knighted, and who died after thirty-six years on the Bench plain John Heath. He was then in extreme old age, 'as old as Maynard,' says Campbell, 'and might almost have remembered him.'[5] One or two incidents of this circuit were afterwards recorded in the 'Lives of the Chancellors.' A man charged with felonious

[1] *Lives of the Chancellors*, viii. 224.

[2] In the same letter Tidd made a similar application for Pepys, whom he brackets with Campbell as a young man of 'very considerable legal ability, most unremitting application, and unexceptionable principles.'

[3] Northern, Midland, Norfolk, Western, Oxford and Home; until 1830 there were only twelve Common Law Judges.

[4] Campbell's *Lives of the Chancellors*, i. 423 *n.*

[5] *Ibid.* v. 29 *n.* Maynard was the famous serjeant who helped to conduct the impeachment of Strafford and lived to be a Commissioner of the Great Seal under William III. He died in 1690 at the age of eighty-eight. Heath was born in 1736.

violence to a female appeared to be innocent by reason of the consent of the prosecutrix, whereupon Heath said, 'Gentlemen of the Jury, acquit the prisoner; if such a scandalous prosecution were to succeed, which of us is safe?' At the same assizes a man convicted of murdering his wife was asked, according to form, if he had anything to say why sentence of death should not be passed upon him. He gave a very moving account of his wife's misconduct and the provocation he had received from her, to which the same judge rejoined,

Prisoner, *you were wrong in point of law*; you must therefore be taken hence to the place from which you came, and thence to the place of execution, and there you must be hanged by the neck till you are dead, and may the Lord have mercy on your soul.[1]

Campbell was faithful to 'the Home' for three years. On his first circuit he did not get a single brief, and his pocket was picked of 15*l.* in the Crown Court at Chelmsford; on the second he was equally briefless, but suffered no actual loss; on the third he had a guinea *kite*,[2] and on the fourth a four-guinea brief. The competition was too great to allow of that opening which Mrs. Micawber justly considered was so essential to success. He was luckier in London; there his first six months yielded forty guineas, and he made a nice little sum by writing a book on the Law of Partnership for a friend who found himself unequal to the task.[3] His spare time was occupied in drawing pleadings for Tidd and answering cases for Marryat. But he was sore and disappointed, and at times would vow that he had mistaken his vocation, or would attribute his failure to his inaptitude for making friends with the attorneys and his inability to play whist.

[1] Campbell's *Lives of the Chancellors, loc. cit.*

[2] A kite is a 'back sheet' of paper with instructions to open the pleadings, after which the counsel has no further *locus standi* in the cause.

[3] It was published over the name of William Watson. It is a substantial tome of over 500 pages, and the second edition (dated 1807) is still on the shelves of Lincoln's Inn Library.

But there remained an unappropriated avenue upon which he seized with avidity. The sudden and enormous growth of business at the Guildhall, due to the Continental Blockade, together with the mass of new law which Lord Ellenborough was making day by day, called loudly for a Nisi Prius reporter. Espinasse, who had hitherto fulfilled that function with indifferent success, was quite unfit for it, and Campbell entered into an agreement with Mr. Butterworth, the principal legal bookseller, for the production of a new series. The enterprise was favourably regarded by both Bar and Bench, and the reporter possessed every qualification. Hitherto he had complained that his severe apprenticeship had been of no advantage to him, and that he might have made every farthing he had earned without knowing the difference between *trespass* and *case*.[1] He now found full occupation for every scrap of learning he had amassed at Tidd's or elsewhere.

Probably, he wrote in after years, no other judge than Lord Ellenborough could have supported such a burden as was then cast upon him, and there certainly never was such a judge for a Nisi Prius reporter. He was not only laborious and indefatigable, but he was acute, bold, decisive, ratiocinative and eloquent. He never shirked any point that was raised before him, or decided it without copiously and pointedly giving his reasons.[2]

And Campbell was no mere stenographer; he exercised an absolute discretion as to what decisions he reported and what he suppressed, and sternly rejected any which appeared to him inconsistent with former rulings or recognised principles. He jocularly took credit for helping to establish the Chief Justice's reputation as a lawyer, and he used to boast that he had, in one of his drawers, material for an additional volume in the shape of 'bad Ellenborough law.'[3] The mere undertaking was

[1] *Life of Lord Campbell*, i. 207. [2] *Ibid.* i. 215.

[3] This curious collection, together with much more of Campbell's MSS., perished in the Temple fire of 1838.

a bold step for a barrister of less than two years' standing; it argued a fine degree of self-confidence as well as an extraordinary acquaintance with the books. But Campbell's Reports have stood the test of time and have received the hall mark of the highest judicial approval.[1] They were distinguished by an important innovation; for the first time the names and firms of the attorneys on the record were printed at the end of each case. It was a delicate and ingenious mark of attention which certainly did its originator no harm amongst the dispensers of fame and fortune.

The Reports were of service in another way: through them Mr. Campbell became known, by name if not by sight, to the leaders of the Bar and to their Lordships on the Bench. Dining in old Lincoln's Inn Hall on Grand night one Michaelmas term, 'Jeemy' Park pointed out the author to Chancellor Eldon himself, and asked if he was acquainted with him. 'No,' was the answer, 'but he is a very sensible and clever man, and I like his Reports much.'[2] His practice, of a somewhat miscellaneous order, it is true, began to advance rapidly. In his third year (1808) he had made 220 guineas in fees between New Year's Day and the beginning of the Long Vacation, and he was an assiduous holder of other men's briefs in Westminster Hall. But on the circuit he was completely at a standstill, and he suddenly came to a bold determination. A series of promotions, deaths, and other casualties had created an opening on the Oxford. A barrister possesses the right of changing his circuit once, though once only, and then within a reasonable but indefinite period after his call. Having ascertained that there would be no indelicacy in doing so,

[1] See Williams *v.* Bayley, L.R. 1, English and Irish Appeal, 213, per Lord Cranworth. 'On all occasions I have found, on looking at the reports by the late Lord Campbell, of Lord Ellenborough's decisions, that they really do, in the fewest possible words, lay down the law, very often more distinctly and more accurately than it is to be found in many lengthened reports.'

[2] *Life of Lord Campbell*, i. 237.

Campbell opened the spring assize of 1810 at Worcester instead of Chelmsford. A prompt election to the mess quenched all doubt as to the strict regularity of his proceedings.

The change of scene was attended with the happiest results. If he did not spring into practice at a bound, his ultimate success was never in doubt. His new rivals were men of very different calibre from Shepherd and Garrow and Best. The leaders were men of merely local celebrity; Abbott, afterward Lord Chief Justice, the chief among the stuff gownsmen, was hopelessly inefficient when addressing a jury. The rank and file were, for the most part, sons and brothers of the country gentry, or scholars from the Universities. 'Accomplished gentlemen, but no lawyers,' was Campbell's summary of the Oxford circuiteers after a very short experience, and he adds, 'the mode of doing business here is below what my most sanguine imagination had conceived.' [1]

I do not propose to follow him round the circuit or to chronicle his steady rise into the best London business. Those were the palmy days of the Bar. The prizes of the law, though magnificent, were not numerous, there were no County Court judgeships nor revisorships, nor similar *solatia*, the prospect of which now swells the Inns of Court with a crowd of those who hope for the sleeve rather than the gown. Subject to a few exceptions, every action where more than forty shillings was in dispute had to be entered at Westminster. Every petty misdemeanour went to Quarter Sessions or assizes, while the law of settlement was a never ending and highly lucrative cause of dissension between the various parochial authorities. And the Oxford Circuit, where the expense, as Campbell remarks,[2] was so great that it could only be supported 'by men of fortune who are not very formidable,' enjoyed a source of revenue which has long since passed away. Until the year 1830 all the more important

[1] *Life of Lord Campbell*, i. 244. [2] *Ibid.* i. 268.

Welsh cases, civil and criminal alike, were tried at Hereford and Shrewsbury.

By the middle of 1814 Campbell was able to reckon his professional income at little short of 2,000*l.*, and he had more work than any man of his standing. He was contemplating the discontinuance of his Reports,[1] and he had joined the Verulam Club; the days of cow beef were past and gone. He was the recipient of attention and compliment from the Bench, and the occasional 'baitings' which he received from Lord Ellenborough and his scarcely less formidable puisnes were a sincere if somewhat disagreeable form of flattery. Yet there were crumpled rose-leaves beneath his pillow. Fortune rather than fame had hitherto attended him, he was in request for substantial, not for showy business, for points of law and heavy insurance cases rather than for sedition and breach of promise. He found it difficult to persuade his father that a young man whose name never figured in a sensational trial could be one of the most rising figures at the Bar. And he was made still more conscious that a prophet has no honour in his own country when he found himself without a retainer for or against the Fife Gaol Bill.[2]

Moreover, while the accident of his birth in that district brought him no briefs, he was intensely mortified that no efforts, however persevering, could overcome the broad Fifeshire speech of his childhood.[3] 'I would surrender a considerable portion of my legal acquirements to have a pure English accent,' he once wrote in a splenetic mood. But to the close of his life he 'scotched' his sovereign's English to the unmixed delight of all bystanders. This ungratified wish was a curious little bit of vanity; as a matter of fact, peculiarity of dialect or accent is often a royal road to success at the Bar and

[1] The last number appeared in 1816.
[2] *Life of Lord Campbell*, i. 268–69.
[3] See, for instance, his *Life*, i. 212, 234, 236.

in politics. What would Lord Morris have been without his brogue?

Into the social life of the Circuit Campbell entered with zest and appreciation; and the accounts he has left of the daily round of work and pleasure are graphic transcripts of a form of existence which, since the introduction of the one judge system, has been steadily passing away like other cheery fashions of the antique world. On the Oxford Circuit the bond of union was closer and the association lasted for longer periods than on the Home. Reading and Oxford, it is true, clashed with the London sittings, and there was little work at either place. But Worcester, Gloucester, Hereford, Monmouth, Shrewsbury, and Stafford found the same set of men, leaders and juniors, briefless and overbriefed, forced into the closest intimacy, thrown together in Court, on the river, and over the bottle. To many it was just a continuation of friendships formed at Eton and Christ Church, a temporary return to the freedom of undergraduate and celibate days. But to men who had lived lonely lives, who had practised self-denial and undergone privation, who had never known the 'fine careless rapture' of an English public school or University, the circuit was at once a revelation and a liberal education. Campbell might write to his father[1] that the youths who had joined within the last seven years were only fit to drive a curricle or talk of Greek prosody, but reading between the lines of his correspondence it is impossible not to detect the pleasure which he derived from the company of men who had enjoyed advantages which he had been denied, as well as the ambition to assimilate his deportment and conversation to the tone of these happy youngsters.

The letters and fragments of autobiography which cover Campbell's career on the Oxford Circuit provide the raciest reading. In our whole literature there is no such chronicle of the ups and downs, the hopes and fears

[1] *Life of Lord Campbell*, i. 260.

of a fighting barrister; and, outside the cypher of Pepys' diary, we may search in vain for so candid and unconscious a revelation of a very human soul. It cannot be said that the candour is always *in favorem scriptoris*. Warm-hearted and affectionate as he was in the domestic relations, there is a selfishness, a desperate eagerness to push to the front, and a perpetual air of calculation in all he writes, which leave an unpleasant taste behind.[1] He observes the honourable rules of an honourable profession, but there are few sparks of generosity, and fewer traces still of the thought that success does not always fall to the fittest, or bring the greatest happiness with it.

With his own confessions before us, it is difficult to imagine that 'Jock' Campbell could have been over-popular among his messmates; but he was a stickler for the privileges of the Bar, and in one particular the effect of his exertions survives to this day. Before his time the Monmouthshire Quarter Sessions, held for some inscrutable reason at Usk, were attended exclusively by the attorneys. In the summer of 1812 Campbell, by an unexplained manœuvre, induced the justices to make an order that for the future only counsel should be heard. When October came he and two confederates—for without something in the shape of a Bar it would have been hard to justify the new order—posted over from Gloucester, found room at the Three Salmons, 'and with the help of punch contrived to keep up their spirits.'[2] That night not a brief was delivered, and the next morning the attorneys made a desperate effort to get the order

[1] A curious admission to make in black and white is the statement (*Life*, i. 139) that he possesses Rousseau's feeling of imagining that mankind are always plotting against him. And elsewhere (i. 333) he applies to his own case 'the invariable and systematic conspiracy among the leaders to depress a junior and cut him off from all opportunity of gaining distinction.'

[2] *Life of Lord Campbell*, i. 284. Should these lines meet the eye of a certain learned gentleman who is now on the step which leads to the Judicial Bench, he may possibly remember a New Year's Eve long ago when three members of the Usk Sessions were driven to the same expedient.

rescinded. By a majority of only ten to seven the magistrates stood firm, and, after compromising as many cases as they could, the vanquished were compelled to stand and deliver. 'I made nine guineas,' records Campbell, 'Price two, Conant one'—a not unusual proportion where 'Jock' was concerned.

In 1816 the elevation of Abbott to the Bench left the virtual lead of the circuit open to him. He relates, with glee, how at Gloucester the rumour 'that Campbell was so ill as not to be able to come into Court circulated like an extraordinary gazette.'[1] He could now indulge himself modestly in books and plate, keep riding horses, and lay down old Madeira.[2] But his head was not turned, nor, as the following extract from his diary will show, was his natural industry abated:

> At Guildhall by nine o'clock—remain in Court till near four—come home—eat a mutton chop and a potato sent to my chambers—no wine nor small beer—begin immediately to read my briefs—go out to consultations—sit up till one to answer cases.

Yet on occasion he gives a bachelor entertainment in his chambers that would spell ruin to the digestion of a modern King's Counsel:

> Dinner was put down on the table at half-past six. We continued drinking till past one. We then had coffee, tea, and liqueurs, and broke up between two and three.[3]

In 1819 there was a further upheaval on the circuit, and Campbell was persuaded to make application for a silk gown. The request was not acceded to, but the mere fact of having made it gave the applicant a sort of intermediate or brevet rank. In taking this step he had been supported and encouraged by Abbott, now Lord Chief Justice, a sign in itself of the position he had achieved in the estimation of the Bench. The resignation of Lord Ellenborough in 1818 had made life in the

[1] *Life of Lord Campbell*, i. 291.
[2] *Ibid.* i. 339.
[3] *Ibid.* i. 366, where the menu is given in full.

Courts much easier and pleasanter for his whilom reporter. The imperious and irascible Chief, though showering his strokes with vigorous impartiality, had his likes and dislikes, and Campbell certainly was not in the former category. At one moment he complains bitterly of the unfair way in which he is treated by 'my Lord,' at another [1] he records the boldness with which he has withstood his oppressor to the face. That the fault may not have been all on one side is suggested by the following extract from Campbell's correspondence :

> I have taken to quarrelling with Gibbs [2] lately instead of Lord Ellenborough . . . he cannot deal me the knock-me-down blows of old Brough, and if you watch your opportunity you may give him a podger. I am seldom in a cause of any consequence before him without getting into some squabble with him.

In a letter to his father dated January 16, 1820, Campbell mentions that he is dining at Scarlett's to meet the Chief Justice. Mr. James Scarlett, K.C., was at this date leader of the Northern Circuit, and, if verdict-getting be the test, perhaps the foremost advocate of his own or any other age. To be admitted to his intimacy was in itself a patent of precedence, but this casual allusion had a significance of another character. Campbell was now past his fortieth year, and for some time past his thoughts had turned to matrimony; his letters abound in jocular allusions to *parties*, fair or otherwise, and in lamentations over his lonely state. Scarlett was the father of two daughters, and on the elder of these Campbell's affections became, after a short acquaintance, irrevocably fixed. The hopes and fears of his courtship—for the course of true love failed at first to run smoothly—are set out in his published letters with a particularity more suggestive of an old-fashioned romance than of a legal biography. Here it must suffice to say that all ended well, after

[1] *Life of Lord Campbell*, i. 360.

[2] Sir Vicary Gibbs, afterwards Chief Justice of the Common Pleas.

a period of bitter suspense, and that the happy pair were made one at Abinger Church on September 8, 1821. Lucky in nearly everything he set his hand to, John Campbell was never more fortunate than in his marriage.

During these exciting months Campbell had an additional piece of disappointment. For a moment his ambition to be employed in a great State trial seemed on the point of being gratified. A question had arisen whether the law officers could, as members of the House of Commons, properly appear before the House of Lords in support of the Bill of Pains and Penalties against Queen Caroline. To get over the difficulty it was proposed that Copley should go out of Parliament for the time and lead for the promoters at their Lordships' Bar, in which case he gave Campbell to understand 'without any direct promise,'[1] that he would have a junior brief. The idea, however, was abandoned; the choice of counsel was left to Gifford, the Attorney-General, from whom Campbell had no expectations, and the brief went to Parke.

From the hour of his marriage Campbell swam in the full stream of prosperity. Sons and daughters were born to him, his income increased year by year, he took 'a commodious and convenient house,'[2] and the Scarlett connection gave him the entrée into the best Whig society. Hitherto he had abstained from all intervention in politics beyond being elected, to his intense pride and satisfaction, a member of Brooks's. Since his boyhood at St. Andrews he had been a convinced Liberal of a moderate type, though he had never allowed any untimely expression of his views to interfere with his professional progress. The time had now arrived when a seat in Parliament would be a help rather than a hindrance. At the General Election of 1826 he was the unsuccessful Whig candidate for Stafford; he bore his defeat philosophically, though he admits with the

[1] *Life of Lord Campbell*, i. 378. [2] 9 New Street, Spring Gardens.

simplicity of a Homeric hero that after the poll was declared, he relieved his feelings with a 'hearty good cry.'[1]

In the following year Copley's appointment to the Woolsack brought him the much coveted silk gown,[2] to which the annual honorarium of 40*l.* was still attached. Of his success as a leader both on circuit and at Westminster there was never any doubt. Subtle in reasoning and fertile in illustration, he was a convincing, though hardly an impressive, speaker; an admirable lawyer steeped to the finger-tips in the intricacies of plea and demurrer, of untiring industry and remarkable adroitness, his only weakness was an occasional tendency to deviate into eloquence.

In May 1828 he received from Sir Robert Peel a flattering and unexpected invitation to become senior member of the Real Property Commission. The offer, as we have seen,[3] had been originally pressed upon Sugden, who found it incompatible with his work at the Bar. Campbell, however, accepted with alacrity, and embraced the opportunity, to use his own language, of being trained in the law of real property, in which hitherto he had been rather deficient. He threw himself, with all his natural energy, into his new studies, and set to work *ab ovo* as if he had never read the second volume of Blackstone, or Littleton and his commentator.[4] With him were associated some of the most skilled real property lawyers of the day, Brodie, Duval, and Hodgson among them. Their labours were assiduous, exacting on Campbell's part the sacrifice of the whole of his long vacation. Apart from the general discussions a particular subject was specifically allotted to each commissioner; to Campbell fell 'Prescription and Statutes of Limitation,' and he claims the credit for the well-known Act, 3 & 4 William IV., chapter 27.

[1] *Life of Lord Campbell*, i. 434; *cf.* 524.
[2] *Vide ante*, i. 57.
[3] *Supra*, 11 *n.*
[4] *Life of Lord Campbell*, i. 458.

I read every case to be found connected with the subject in our Reports from the year books downwards, and I inquired how it had been treated in the Roman Civil Law, by the modern Continental nations, and by the different States forming the American Union. Our own law of prescription I found the most barbarous and anomalous that ever existed in the world.

The first Report of the Commissioners was presented on March 10, 1829.[1] Campbell asserts that, in addition to the Title Prescription, he penned the Introduction, which was

very much approved of by the profession, and on points of real property law is now cited in Westminster Hall with text books of authority.

Lord St. Leonards, writing, it must be remembered, at a great age and in a bad temper, puts a different complexion on the procedure.

Lord Campbell, he says, was in the habit of treating the able Bills which the Commissioners framed as his own. The subjects before the Commission were altogether out of his line of study and practice; and he had no hand in framing the Bills. He converted the heads of one of the Bills in the Report into a Bill which of course was laid on one side, and the Bill was drawn elaborately by another hand. One of the learned conveyancers among the Commissioners said to me at the time that Campbell had no more to do with it than his footman.[2]

One result of the Commission was to bring Campbell into friendly personal relations with Peel, and as a recognition of his services he received from Lyndhurst the offer of a judgeship,[3] which, however, he had the

[1] *Life*, i. 459. Several other Reports were published in the next three years, of which, however, Campbell had only the general superintendence, though he tells us he was kept at work on the Commission until 1831.

[2] *Misrepresentations*, &c., 45.

[3] Whether Campbell received any pecuniary acknowledgment

courage to refuse.[1] His career was hardly yet begun, and he had made up his mind to mingle in the conflicts of the House of Commons, and to play for the higher stakes. Meanwhile he was holding his own against Denman and Wilde, and his 'great father-in-law, renownéd' Scarlett.[2] A high compliment was paid him by his retainer on behalf of Serjeants' Inn in a rating appeal with all the judges for his clients.

With the dissolution on the accession of William IV. came Campbell's opportunity. At first the prospect of entering Parliament seemed unpropitious unless he was prepared to come in for a Government borough and accept the Tory livery. 'Seats are said to be scarcer and dearer than ever known; 1,500*l.* a year, or 6,000*l.* taking all chances.' A pressing invitation reached him, however, from his old friends at Stafford, and after a short but very expensive contest he was returned. Stafford enjoyed an evil pre-eminence even in those days of unabashed corruption, and Campbell is eloquently silent as to the horrors of the campaign; he consoles himself with the reflection that some of his legal friends were even worse off. Within a month of taking his seat Lord Grey had been sent for by the King, and in the selection of the new law officers, a task of unusual difficulty, Campbell heard his own name freely mentioned for the Solicitor-Generalship. The time for that, indeed, was not yet come, but the luck which seldom forsook

seems uncertain. He tells his brother (*Life*, i. 464) that the Commissioners (*query* Conveyancers) insisted on being paid, but that he had expressed a wish to act gratuitously. How it ended we are not told.

[1] *Life of Lord Campbell*, i. 479.

[2] The professional and the subsequent Parliamentary rivalry could hardly fail to put a strain on the domestic relationship, and Campbell felt a not unnatural relief when Scarlett was raised to the Bench in 1834. The latter's acceptance of office under Canning and the Duke had cost him the Woolsack and condemned him to remain at the Bar for an unduly prolonged period. As Campbell puts it, instead of being a powerful patron he turned out to be an overwhelming rival.

him had brought him into Parliament at precisely the right moment. The Whigs had emerged from the bleak shades of opposition to revel in the plains of Goshen for nearly all the rest of Campbell's life. The undisputed reign of the Tory lawyers was over.

CHAPTER VII

LIFE OF LORD CAMPBELL DOWN TO HIS RESIGNATION OF THE GREAT SEAL OF IRELAND

1830–1841

CAMPBELL marked his entry into Parliament by moving, on December 16, 1830, for leave to bring in a Bill to establish a general Register of Deeds in England.[1] His position as head of the Real Property Commission gave him a standing unusual for a new member, and it was most galling to Sugden, ex-Solicitor-General, and the profoundest real property lawyer of his time, to see his own preserves being calmly shot over by this poacher from the Oxford Circuit. Before the year was out the latter received substantial proof of ministerial favour in his appointment as senior counsel to prosecute the Berkshire rioters before a Special Commission at Reading.

Prepared as he was to follow his leaders wherever they gave the word, Campbell was quite appalled by the production of the first draft of the Reform Bill: 'this, really,' he wrote, 'is a revolution *ipso facto*; had the measure been practicable I would have supported it *totis viribus*.'[2] He soon came to the conclusion, however, that less danger was to be apprehended from passing than from rejecting it, and he posted up from Shrewsbury Assizes, returning a big bag of briefs, to vote for the second reading. As the division showed 302 for the Bill

[1] See his published speeches, p. 426; the failure of the press to give proper reports of this and others of a kindred nature was a source of constant chagrin to him.

[2] *Life of Lord Campbell*, i. 504.

against 301, he had some justification for considering that his presence had turned the scale,[1] and some consolation for failing to catch the Speaker's eye, though he rose seven times in the course of the debate. In the dissolution that followed he was again head of the poll at Stafford with two Tories beneath him. His wife had made herself very popular in the town, and the common mode of giving a plumper was to vote for 'Mr. and Mrs. Campbell.'

Throughout the debates on the revised version of the Bill the learned member for Stafford was largely in request; he did good service in the House against Croker and the phalanx of Tory lawyers, he was consulted unofficially by Lord Althorp, who struck him as knowing more about the Bill than his legal advisers; and he was called in to assist Jeffrey, the Lord Advocate, in framing the Scotch Reform Bill. His own especial bantling, the Registration of Deeds Bill, was lost in the limbo of a select committee; the attorneys had persuaded Lord Grey that it would be unpopular in the country. Early in the new year (1832) he went 'special' to Bristol on behalf of an officer of the 14th Dragoons, who had shot one of the rioters in the preceding November and was now indicted for murder. He obtained a triumphant acquittal, and carried away with him a vivid memory of the state of the city, which looked as if it had been bombarded and taken by storm.

Parliament was dissolved in December, and Campbell, who had had quite enough of Stafford by this time, was returned for Dudley, one of the boroughs created by Schedule D.[2] The newly enfranchised electorate of the Black Country was wild with enthusiasm. 'Instead of

[1] At Hereford, the next town on circuit, the householders assembled outside Counsellor Campbell's lodgings and gave three cheers for the man who carried the Reform Bill.

[2] It was long, however, before he heard the last of his old constituency. Lyndhurst took a perpetual pleasure in bringing the vagaries of the Stafford freemen and the compliance of their representatives before the House of Lords.

treating them,' says Campbell, 'they treated me,' and from start to finish he was not allowed to put his hand in his pocket.[1]

Three weeks before the polling day he had been appointed Solicitor-General *vice* Denman, who had succeeded Lord Tenterden as Lord Chief Justice. Ministers, he informs his brother,[2] would very much have liked to get rid of Sir William Horne, and made him (John Campbell) Attorney-General with a Chancery man as Solicitor, an arrangement which, as we know, was not long deferred.[3] In the meantime it was conceded that he should conduct all Government prosecutions and be consulted separately when necessary. From the first it was a false situation for all parties; Horne was far below Campbell, both in professional estimation and in volume of business, and Lyndhurst, in his most ironical manner, congratulated 'Mr. Solicitor' on his humility.[4]

Sir John Campbell celebrated his retirement from the Oxford Circuit by entertaining them at a grand dinner.[5]

> They rejoice most sincerely in my promotion, he remarks, but not more so than they did in the report that I had been killed by a fall from my horse at Gloucester.

He could well afford to devote himself exclusively to London; his business was now nearly equal to Scarlett's, and much greater than that of any other man at the Common Law Bar. He was as indefatigable in Parliament as in Court. He fought O'Connell gallantly over the Irish Coercion Bill, where a treble burden was imposed upon him by the fact that neither of the Irish law

[1] *Life of Lord Campbell*, ii. 31.
[2] *Ibid.* ii. 18. [3] *Ante*, i. 390.
[4] *Random Recollections of the House of Commons*, p. 167.
[5] The procedure has been reversed of recent years. When Lord Loreburn, then Sir Robert Reid, was made Solicitor-General, it was we who entertained *him* at 'Jimmy's,' of which now not one stone is left standing.

officers had seats in Parliament. And he managed quietly and tactfully to smuggle into law the bills of the Real Property Commissioners for abolishing fines and recoveries, for allowing brothers and sisters of the half-blood to succeed one another on intestacy, for regulating the law of dower, and for reducing to twenty years the period of possession which gives a right to real estate.[1] His comments are especially worthy of attention at the present day.

They passed through both Houses of Parliament without one single syllable being altered in any of them. This is the only way of legislating on such a subject. They had been drawn by the Real Property Commissioners, printed and extensively circulated, and repeatedly revised with the advantage of the observations of skilful men studying them in the closet. A mixed and numerous deliberative assembly is wholly unfit for such work.[2]

According to compact he rendered himself responsible for Government prosecutions, and he filed, in Horne's name, an *ex officio* information against the 'Sun,' the organ of Cobbett and O'Connell, for exhorting the people not to pay taxes and for advocating force as the only remedy against a Government that was deaf to the demands of the people. This exercise of vigour was a somewhat bold undertaking in view of the language used by William Brougham and other members of the legislature and of the 'essentially English proceeding of telling the collector to call again,' to which Lord Milton had resorted during the crisis of the Reform struggle.[3]

As the session wore on, Campbell steadily increased his hold upon the House.

He is always listened to, wrote Mr. James Grant, of the 'Morning Advertiser.'[4] He has much honesty as well as energy of purpose. There is nothing jesuitical or equivocal

[1] 3 & 4 Will. IV. c. 74, c. 105, c. 108, c. 27.
[2] *Life of Lord Campbell*, ii. 29.
[3] Trevelyan's *Life of Lord Macaulay*, i. 253.
[4] *Random Recollections of the House of Commons*, 220.

about him. He fearlessly expresses the convictions of his mind. There is no reserve about him. His style is vigorous and plain; it is correct without being polished. What he says is always to the point, and there is no mistaking his meaning. He seldom makes long speeches; they are almost invariably short, but pithy. There is often more matter in a speech of his which occupies a quarter of an hour in the delivery than in speeches of many other honourable members which take six times that space.

Meanwhile Horne had allowed himself to be reduced to a cypher: 'he was never consulted on any measure depending, he was not invited to take part in any debate, and he was seldom in the House except when his attendance was required by the Secretary of the Treasury upon a division.'[1] Such a state of things could not last, and, shortly after the opening of Parliament in 1834, Horne was hustled out of office in circumstances I have detailed elsewhere.[2] I can find no justification for the statement of Sir Denis Le Marchant, that he was 'abruptly displaced at the instigation of Sir John Campbell.' The chief culprit was Brougham, though Horne himself was to a certain extent an accessory; Campbell had already acquired a character for pertinacity and pushfulness, and subsequent incidents have cast a reflected light upon his earlier promotion. On February 22 he was made Attorney-General, and a fortnight later met with the first check in a career of almost unbroken prosperity by the refusal of his Dudley constituents to re-elect him.

For three months he was excluded from the House of Commons till a vacancy in the representation of Edinburgh placed him in the proud position of member for the Scotch capital.[3] His return to Westminster in June 1834 was heartily welcomed by his colleagues, for

[1] *Life of Lord Campbell*, ii. 28. [2] *Ante*, i. 390–1.

[3] It was in the course of this contest that he first alluded to himself as 'plain John Campbell.' His electoral vicissitudes were perpetuated in the nomenclature of his family, a son and daughter being christened respectively Dudley and Edina.

Pepys, the new Solicitor-General, was a very indifferent substitute, and the process of ministerial disintegration had already set in. During the remainder of the session he did much useful work; he retained his office without question on the accession of Lord Melbourne to the Premiership, and he drafted the Irish Coercion Bill, which took the place of the original measure that had proved so fatal to Lord Grey and Mr. Littleton.

In the autumn he took a prominent part in the Grey festival at Edinburgh, and I have already quoted from his very entertaining account of Brougham's intrusion upon the scene.[1] North of the Border the tide of Whig gratitude was still at flood, but Campbell's shrewd judgment and the experiences of the last few months had taught him on what a treacherous foundation the Melbourne Administration rested. In September the death of Leach vacated the Mastership of the Rolls, and the Attorney-General was preparing to lay formal claim to an easy, honourable, and lucrative post for life, when he was spared the pain of a refusal by Brougham's prompt action in appointing Pepys.[2]

The pretext for passing me over, Campbell writes in his autobiography, was that, Brougham being himself a common lawyer, it would have made an outcry if, at the same time, a common lawyer had been appointed to the Rolls. This was so plausible that I found I could not resist the appointment, and I offered no opposition to it beyond a protest that it should not be drawn into a precedent.[3]

With this statement we should compare Campbell's actual words at the time. Leach died on September 14, and on the 22nd the Attorney-General approached the Chancellor in the following terms:

I am rather surprised that I have not yet heard a syllable

[1] *Ante*, i. 335.

[2] See *ante*, i. 392. Brougham asserts (*Memoirs*, iii. 423) that Campbell had actually gone with his claim to Lord Melbourne the moment the death of Leach was made public.

[3] *Life of Lord Campbell*, ii. 52.

from any quarter about the Rolls. I presume that no arrangement would be concluded without my being consulted. As your Lordship has now gained such an ascendancy in the Court of Chancery I hope you will no longer consider that there is any objection to the Attorney-General, though a common lawyer, succeeding to the vacancy, according to the common course. When Lord Lyndhurst, a common lawyer, was Chancellor, and Leach was supposed to be dying, Scarlett, a common lawyer, had notice that he was to succeed him. I certainly feel that by devoting myself to the duties of the office I could discharge them satisfactorily. As Edinburgh now stands I could be again returned without even showing myself, so that I might still assist you as effectually as at present, in carrying through any measures of legal reform, and if it were thought expedient I might sit, as Alexander did, and relieve you from a good many of the Scotch appeals. Upon the whole I believe that, all things considered, no other arrangement will be found more advisable.[1]

Campbell was informed that the vacancy was already filled, and in a letter dated October 3,[2] he admits that since the arrangement is put upon the ground of public expediency, he must be contented. He was grievously offended, but his correspondence, as printed by Brougham, contains no reservation of a future claim.[3]

He went out of office, with his party, in November 1834, but it was an ill wind indeed that brought him no luck. His father-in-law succeeded Lyndhurst as Chief Baron, assuming the title of Lord Abinger, thus relieving him from his most formidable rival at the Bar. In the General Election of January 1835 he was again returned for Edinburgh with Mr. James Abercromby, shortly afterwards chosen Speaker in the new Parliament. It was destined to be his last contest, and was enlivened by some

[1] Brougham's *Memoirs*, iii. 423.

[2] Given by Brougham, iii. 430; *vide ante*, i. 393.

[3] The correspondence, however, is admittedly incomplete. See Brougham, iii. 426 *ad finem*.

smart passages at arms between himself and his Conservative opponent, Lord Ramsay, who figured in the struggle as the 'Laird of Cockpen,' but is known to history as the Marquess of Dalhousie, Governor-General of India. The resignation of Sir Robert Peel restored him to his old position as Attorney-General, with Brougham shelved, the Great Seal in Commission, and a general air of unrest pervading the Ministerial lawyers. During the session that followed he materially assisted the Government by preparing, and carrying through the Lower House, the Municipal Corporations Bill, and he had every reason for imagining that he had established and strengthened his claim for preferment.[1]

In the first weeks of 1836 the crisis was reached. Lord Melbourne was unwillingly persuaded that the legal interregnum could be tolerated no longer, and Pepys was suddenly appointed Chancellor. Though Campbell was freely credited with aspiring to the Woolsack, and Lyndhurst used to plague Brougham by openly designating the Attorney-General as his successor, the subject of the jest was well aware that he could put forward, as of right, no claim to an office which entailed Cabinet rank. On hearing a rumour 'that some new arrangement was in contemplation,' he wrote both to Melbourne and to Lord John, begging for information.[2] He was told that Pepys was to be Chancellor and that Bickersteth was to be sent to the Rolls.

This last item was too much for Sir John Campbell; he promptly replied that he considered himself to have an unquestionable right to the Rolls, and if it were disregarded he should resign his post as Attorney-General by way of protest on behalf of the privileges and honour of the Bar. Melbourne remained unshaken, in spite of a correspondence, the tone of which may be sufficiently

[1] Campbell deserves to be held in affectionate remembrance by all revising barristers; when their remuneration was being fixed by statute he held out for guineas instead of pounds.

[2] *Life of Lord Campbell*, ii. 77.

gauged by the following extract from one of the Premier's letters :

I had, I own, entertained a sanguine expectation that the peculiarities of the present time, and of our actual situation, would have induced you to acquiesce in the arrangement which we have thought it our duty to propose. You say you do not mean to reason the matter with me ; and it would be presumptuous if I were to attempt to reason it with you who are so much more familiar with the whole subject. . . . With regard to the honour of the Bar, &c., the principal object which we have to bear in view is the public welfare, the benefit of the litigant parties, the due administration of justice ; and, much as I respect the profession of the law, I cannot hold that their opinions and feelings are to be taken into account, except inasmuch as they are founded on reason and are evidence of the convenience or inconvenience of the course which they either approve or condemn.[1]

Campbell was equally firm, and upon learning that Bickersteth's appointment was a *fait accompli*, he drove to the Premier's house in South Street with his resignation in his pocket. What happened is best described in the language of Melbourne's letter to Sir Herbert Taylor :

The feelings of the Attorney-General have been much, and not unnaturally excited. . . . His loss, under any circumstances, would be severely felt by his Majesty's Government, under the present circumstances it would be still more prejudicial, and I trust, therefore, that his Majesty will forgive me for having taken rather extraordinary measures in order to retain him by pledging myself to advise his Majesty, if he will remain Attorney-General, to raise Lady Campbell immediately to the Peerage.[2]

[1] Lord Melbourne's papers, 303. The letter is dated December 31, 1835. Campbell's share in the correspondence is not given in his *Life*. The editor of the Melbourne papers, Mr. Lloyd Sanders, states (*l.c.* note) that the ' real reason was not that Sir John Campbell was a common lawyer, but that the King objected to him *in toto*.' No authority is given for this theory, which I take leave to question most gravely.

[2] *Melbourne Papers*, 304. The date of the letter is obviously January 12 not June 12, as printed ; *cf.* Torrens' *Life of Lord Melbourne*, ii. 172.

In addition to the ennoblement of his family, Campbell was assured that his own promotion was only deferred, 'as a Bill would be brought in to make a permanent Chief Judge in Chancery, leaving the Chancellor to hear appeals in the House of Lords and in the Privy Council.'[1] He went home with the seal of his letter of resignation unbroken; and in the course of a few days his wife was gazetted Baroness Stratheden of Cupar in the county of Fife.[2] His conduct did not meet with any great measure of approbation at the Bar, though he declares that Abercromby, Follett, and others, whose opinions he most regarded, held him to be perfectly right.[3] In spite of his great party services, and of his position as first law officer, he had no claim, legal or prescriptive, to the Mastership of the Rolls,[4] and he was roundly accused of laying down a false standard of professional honour, and then unwarrantably departing from it.

He vapours in Westminster Hall about his resignation and disinterested protest on behalf of the Bar; in twenty-four hours he finds it consistent with his own honour and that of the Bar for the Attorney-General to be passed over if his wife received a peerage.[5]

Nor was the occasion neglected by the Tory pamphleteers. Disraeli, who had his own bone to pick with the gentlemen of the long robe, addressed the second of the 'Runnymede Letters' to Sir John Campbell, and, in his

[1] He was apparently designated for the latter office (*Life*, ii. 78–81), but as we have seen, *ante*, vol. i. 397, the scheme came to naught.

[2] The occasion was celebrated by H. B. in a caricature, which showed Eve tempting Adam with a coronet in the garden of (Strath) Eden.

[3] *Life of Lord Campbell*, ii. 79.

[4] The only office which the Attorney-General was entitled to claim was the Chief Justiceship of the Common Pleas.

[5] *Law Magazine*, xv. 235. The writer proceeds to quote the defence of Serjeant Davy on the Western Circuit, who was charged with disgracing the profession by taking silver from a client. 'I took silver because I could not get gold, but I took every sixpence the fellow had in the world, and I hope you don't call that disgracing the profession.' 'Davy,' says the reviewer, 'did not begin by declaring that his honour required him to take gold.' See Polson, *Law and Lawyers*, i. 122.

newly found solicitude for the honour of the English Bar, declared that the Whigs might corrupt it, but that the Attorney-General had degraded it.

In allowing a judge, who, a very short time back, was your inferior officer, to become Lord Chancellor, and in permitting a barrister who had not even filled the office of Solicitor-General, to be elevated over your head into the seat of the Master of the Rolls, either you must have esteemed yourself absolutely incompetent to the discharge of those great offices, or you must have been painfully conscious of your marked inferiority to both the individuals who were promoted in your teeth; or last, and bitterest alternative, you must have claimed your right and been denied its enjoyment . . . Without imputing to Sir John Campbell any marvellous degree of arrogance, I cannot bring myself to believe that he holds himself absolutely unfit for the discharge of the offices in question. . . . You have not hitherto been held a man deficient in spirit or altogether uninfluenced by that nobler ambition which spurs us on to great careers, and renders the esteem of our fellow countrymen not the least valuable rewards of our exertions. When, therefore, you were thus insulted, why did you not resent the insult? When your fair ambition was thus scurvily balked, why not have gratified it by proving to a sympathising nation that you were at least worthy of the high post to which you aspired? He who aims to be the guardian of the honour of the Crown should at least prove that he is competent to protect his own. You ought not to have quitted the Minister's ante-chamber the King's Attorney-General.

These pin-pricks were wasted on Sir John, who, then, as ever, remained sublimely self-approving, and merely reserved his claims for the next opportunity. Nor was he long without his revenge. 'Lord Melbourne,' as he very truly says, 'had soon occasion to express his satisfaction that I was still at the Bar.' In the summer of 1836 the Prime Minister of England was made defendant in a *crim. con.* action by the husband of Mrs. Norton, the most brilliant of the lovely Sheridan

sisters.[1] Married in girlhood to an uncongenial and worthless husband, her life was a long tale of sorrows which lost nothing in the telling at the hands of one whose poetical gifts fell short of her mastery of nervous and pathetic prose.[2] Lord Melbourne, the William Ashe of Mrs. Humphry Ward's novel, had been fascinated, like all who ever met her, by the '*femme incomprise*,' so beautiful, so accomplished, so unfortunate. He had procured a metropolitan police magistracy for Mr. Norton, he had done his best for him in other ways, and, with more zeal than discretion, had tried to reduce the jars in that inharmonious household. That his attentions, his constant visits, his paternal solicitude were liable to misconstruction does not seem to have occurred to him, and he was thunderstruck when Mr. Norton suddenly removed his children from their mother's care, and served a writ upon him.

In mental anguish which was little consistent with his habitual mask of cynicism, Melbourne appealed to his Attorney-General, who tells us that the retainer caused him more professional anxiety than any other case in his whole career.

Although no violation of confidence and the laws of hospitality had before been imputed to the noble defendant, his morals were not supposed to be very strict, and in a former instance a similar action being brought against him under rather venial circumstances, the verdict of *not guilty* pronounced in consequence of the witnesses not appearing, raised a not improbable suspicion of compromise.[3]

And Campbell was painfully conscious that upon the issue of the trial depended the fate of the Ministry and the prospects of the Attorney-General. If the

[1] 'Georgy (Duchess of Somerset) is the beauty, and Carry (Mrs. Norton) 's the wit, and I ought to be the good one, but then I am not,' was the way in which Lady Dufferin summed up herself and sisters to Disraeli, adding that Charles was 'the only respectable member of the family, and that is because he has a liver complaint' (*Lord Beaconsfield's Letters*, 80).

[2] *Vide supra*, 72.

[3] *Life of Lord Campbell*, ii. 83.

verdict were hostile, Melbourne had no alternative but resignation, dragging with him in his fall a Government whose vital forces had been already undermined; the divorce proceedings which wrecked Home Rule in November 1890 form the nearest parallel in our political history. Once settled down, however, before Chief Justice Tindal and a special jury in the Common Pleas,[1] Campbell's apprehensions were speedily dissipated. Not even the matchless dexterity and winning grace of Follett could get the case upon its legs; the flimsy structure of the charge, the tainted character of the witnesses, were apparent almost from the outset. It had been rumoured that the plaintiff held a tremendous card in reserve in the shape of incriminating letters from the Premier discovered in Mrs. Norton's desk. Three of these were read in Court as 'the most impassioned, the most tell-tale, the most damnatory.'[2] They ran as follows:

'I will call at about half-past four or five'; 'How are you? I shall not be able to come to-day, I probably shall to-morrow'; 'No house to-day. I will call after the levee, about four or half-past. If you wish it later, let me know, I will then explain about going to Vauxhall.'

The signature in each case was 'Yours, Melbourne.' The correspondence appealed irresistibly to the fancy of Charles Dickens, who a few months afterwards reproduced a colourable imitation of it in the trial scene in 'Pickwick.'[3]

The plaintiff's case did not close till half-past six, and, though it was fairly obvious that the story had

[1] June 23, 1836. [2] *Campbell's Speeches*, 23.

[3] 'Garraway's, twelve o'clock. Dear Mrs. B., chops and tomata sauce. Yours, Pickwick.' 'Dear Mrs. B., I shall not be at home till to-morrow. Slow coach. Don't trouble yourself about the warming pan.' The *Pickwick Papers* began to run in April 1836, and the last number appeared in November 1837. I have always believed that the speech of Serjeant Buzfuz was largely indebted to the eloquence of Charles Phillips on behalf of the plaintiff in Guthrie *v.* Sterne, an Irish case printed in 1822.

made no impression on the jury, Campbell was strongly pressed to call the rebutting evidence with which his brief was stocked; Mrs. Norton's friends were most desirous that her name and fame should be cleared as emphatically as possible. He accordingly applied for an adjournment till the next morning, but on receiving a strong intimation from the Court and the jury, he elected not to call witnesses. Exhausted and fasting—for he had overslept himself and gone without breakfast—Campbell delivered a very skilful and effective address, which, without any grace of language or felicity of arrangement, drove home the gross improbability of the accusation. Transgressing the bounds which custom imposed upon counsel, he declared, in obedience to express instructions, that Lord Melbourne had charged him to state most solemnly and unreservedly, that neither by word or deed had he ever abused the confidence reposed in him by Mr. Norton.[1] It was nearly midnight before the judge had finished his charge; the jury found for the defendant without leaving the box, and the burst of applause which followed was heard across Westminster Hall in the temporary chamber which the House of Commons had occupied since the fire of 1834. And, as the triumphant advocate marched along in full panoply of war to his seat on the front bench he was received with loud cheers.[2]

[1] When Serjeant Shee, during the Rugeley poisoning case, committed a somewhat similar indiscretion by avowing his personal belief in Palmer's innocence, it was noticed that Lord Chief Justice Campbell allowed it to pass unrebuked.

[2] With a strange want of delicacy Campbell thought fit five years later to give his defence of Lord Melbourne the place of honour in the volume of his published speeches, which he dedicated in somewhat pompous terms to his brother (*infra*, 177). This lapse of taste exposed him to a stinging comment from a writer in the *Law Magazine* (xxvii. 341). 'Fraternal affection is a charming sentiment, particularly where the gratification of it goes hand in hand with that of one's own vanity, and we dare say this speech has proved nice, agreeable, exciting reading to Sir George Campbell of Edinburgh. But did it never occur to either of this illustrious pair that Mrs. Norton had brothers and sisters too, fondly, fervently, admiringly and confidingly attached to her, who would gladly banish all recollection of the day when her name

Campbell's last years at the Bar passed smoothly and prosperously. The accession of Queen Victoria brought a new lease of life to the Government; and Sir John, who had already tasted the sweets of royal favour from the old friendship between the Scarletts and the Duke and Duchess of Gloucester, now found himself *persona grata* at Court. He was especially delighted when his little mistress told him she heard that he had the most beautiful children in the world.[1] Campbell was a fond and a proud father, and his letters abound in allusions to the sons and daughters who were growing up around him. One of his phrases has been dexterously used as the heading for the first chapter in 'Vice Versa':

In England, where boys go to boarding schools, if the holidays were not long there would be no opportunity for cultivating the domestic affections.

In June 1840 it devolved upon him to prosecute the wretched potboy Oxford for firing at the Queen as she was driving through the Green Park.[2] In January of the same year he had been maintaining her Crown and dignity in the trials at Monmouth of Frost and fifteen other Chartist rioters.[3] In the volume of his speeches

was made the butt of either offensive or defensive ribaldry, and when they tried in vain to cheer her by assurances of never ceasing affection and esteem, while the game, on which her whole future life depended, was played out by strangers in utter disregard of her feelings and interests?' The rule of law which refused any *locus standi* to the wife in a *crim. con.* action was the source of much cruel injustice and not infrequently of conspiracy and collusion.

[1] *Life of Lord Campbell*, ii. 105. 'She asked me how many we had, and when she heard *seven*, seemed rather appalled, considering this a number which she would never be able to reach.' Campbell mentions (ii. 100) that he settled with Charles Greville and Lord Lyndhurst that the Queen should be proclaimed by the style of Alexandrina Victoria; the former name disappeared from State documents on the second day of her reign (Sidney Lee's *Life of Queen Victoria*, 52).

[2] *State Trials*, N.S. iv. 498.

[3] Sir Frederick Pollock and Mr. Fitzroy Kelly, afterwards each in turn Chief Barons of the Exchequer, defended Frost with such effect as to shake Chief Justice Tindal and to give Campbell a very nervous quarter of an hour while the jury were deliberating. *State Trials*, N.S.

he refers, somewhat absurdly, to this abortive attempt to raise the standard of revolt in Newport as 'the most formidable insurrection which has taken place in this country since the time of Tyler and Cade.' A few months earlier, at a breakfast given in his honour at Edinburgh, he had boasted that Chartism was extinct, and that his own exertions had nipped it in the bud. Miss Martineau, who did not like Campbell much better than she did Brougham, declared that

> as the first law officer of the Crown he had misled the Ministers by similar assurances; and he had also encouraged the Chartists by showing them that Government was off its guard. He had to bear something more than raillery at his not having the second sight of his countrymen nor even the use of common eyes.[1]

And, in the course of a Chartist prosecution, which he conducted at Warwick, Goulburn roundly accused him of having encouraged the prisoners by his election and political speeches: 'it was he who ought to be in the dock, not they.' It was not easy to put Sir John out of countenance, and with a deprecatory smile he told the jury that if he had offended against the laws of his country he could be proceeded against like any other man; meanwhile they had only the prisoners to consider, and must confine themselves within the four corners of the indictment.[2]

In February 1837 he was retained with Follett and Wightman for Lord de Ros in the action for defamation which that nobleman was ill-advised enough to bring against Mr. Cumming.[3] The charge was that of cheating at cards, and the excitement in society and the club world was immense. In spite of warning, remonstrance, and innuendo, his Lordship had insisted on turning up aces and kings at the Travellers', and elsewhere, with a

iv. 86 *et seq.* The trial began on December 31, 1831, and lasted to January 8.

[1] *Biographical Sketches*, 249.

[2] *Random Recollections of the Midland Circuit*, 169.

[3] *Annual Register*, 1837, p. 13.

regularity which excited the wonder, mingled with the admiration of the bystanders. Marked cards and a sleight of hand which enabled him to perform the old trick of *sauter la coupe*[1] whenever he was dealer, were alleged to be the agencies employed. The trial terminated, like a more recent card scandal, in a verdict for the defendant, and Pall Mall knew Lord de Ros no more.[2] The evidence of cheating was overwhelming, and Campbell could do nothing but fight a dogged uphill battle in which he was thought to have somewhat exceeded his duty by charging the witnesses for the defence, men of irreproachable honour, with conspiracy. Sir William Ingilby gave him an opening by trying to illustrate the trick in Court and failing conspicuously; and Campbell restored good humour by inadvertently alluding to the effort as an attempt *couper la saute*.

Another famous trial in which he appeared officially was on the indictment preferred against Lord Cardigan, the future hero of Balaclava, for firing with a loaded pistol at Harvey Garnett Phipps Tuckett with intent to murder him. In other words Lord Cardigan, who commanded the 11th Hussars, had winged in a duel an officer[3] who had recently been under his command. It was the culminating point in a long list of scandals which had 'dragged a fine cavalry regiment through a slough of favouritism, petty tyranny, and intrigue, with that glare of notoriety which, to men of honour, is even more painful than the misery which a commanding officer of Lord Cardigan's type has such unbounded power of

[1] A piece of legerdemain by which the dealer, after the cards have been cut for him, replaces the last card, which of course ought to have gone amongst the others, into its old position at the bottom of the pack. To make advantageous use of this the dealer has to know by touch the best cards and secure the presence of one as original bottom card.

[2] He returned, however, to die in England a couple of years later Greville, 2nd ser., i. 180.

[3] Lieutenant Tuckett had contributed to the *Morning Chronicle*, over the signature H.T., a somewhat garbled account of a regimental squabble. On discovering the author of the letter Lord Cardigan challenged him.

inflicting upon his subordinates.'[1] His lordship availed himself of the privilege of trial by his Peers, and was arraigned accordingly on February 16, 1841, before Chief Justice Denman, sitting as Lord High Steward in the absence through illness of the Chancellor, Lord Cottenham.[2] There was no real dispute as to the facts, but the witnesses, adroitly cross-examined by Follett, were unable or unwilling to prove that Tuckett's Christian names were Harvey Garnett Phipps, as charged in the indictment. The last despairing effort on the part of the Crown was to tender a visiting card of the captain's. Follett strove vehemently against its admission, but, on having it handed to him, spun it contemptuously in the air and withdrew his objection. It was merely inscribed 'Captain Harvey Tuckett, 13 Hamilton Place, New Road,' and was no help to Garnett or to Phipps.

The flaw was held to be fatal, and Cardigan was acquitted unanimously, one peer alone, the Duke of Cleveland, asseverating 'not guilty *legally*, upon my honour.' Campbell incurred unmerited obloquy over this failure of justice, for he had distinctly pointed out the necessity of the evidence, and the 'proofs' in his brief were abundant and explicit.[3] His incurable habit of moralising led him into an unlucky phrase: 'If death had ensued, in the opinion of mankind it would have been regarded rather as a great calamity than as a great crime.' This was twisted into a general defence of duelling, and was censured 'in very respectable quarters' as having a tendency to encourage that practice—an accusation which Campbell tells us he felt acutely.

Of all his cases at the Bar, with the possible exception

[1] Sir G. O. Trevelyan's *Life of Lord Macaulay*, ii. 85. It is marvellous to think that purchase in the Army should have survived the Cardigan-Tuckett duel for thirty years.

[2] *State Trials*, N.S. iv. 651, and see the miscellaneous writings of Samuel Warren, vol. ii. *sub tit.* 'Duelling, and What's in a Name?' A very curious note by John Wilson Croker (*Papers*, ii. 407) gives a list of the duels in which Peers and Prime Ministers have been engaged.

[3] *Speeches of Lord Campbell*, 480.

of Norton *v.* Melbourne, the achievement to which he looked back with the greatest pride was his speech in Stockdale *v.* Hansard, April 23–25, 1839. I have dealt elsewhere [1] with that somewhat dreary controversy which Campbell rashly predicts 'will be quoted three hundred years hence if the British Constitution last so long.' [2] His own argument, the fruit of two long vacations, and occupying sixteen hours in the delivery, was massive and erudite, and it still remains the principal mine of learning on the history and rationale of Parliamentary privilege; but it was perhaps better adapted to the Exchequer Chamber than to an adverse Court of first instance, which had the mass of authorities on its side. He had read everything that had the smallest bearing on the subject, from the earliest year-book to the latest pamphlet, and he had himself abstracted every case he had cited. It was cruel to be told by Joseph Hume in the House of Commons that that eminent economist grievously grudged him his fee of three hundred guineas. 'If I had been to be paid' (*sic*), wrote the indignant Attorney-General,[3] 'according to my time and labour, I ought to have received at least three thousand.'

By way of compensation Sugden declared that, after all the debates upon the subject in Parliament were forgotten, this speech would remain to posterity as a monument of Sir John Campbell's fame. Whether Sir John was well advised in cherishing it as a model of forensic eloquence may be doubted. It fills up two hundred and sixty-seven pages of his published speeches.[4] It is exhaustive in every sense of the word; the peroration is a piece of sheer bathos, and the whole performance exposed him, at the hands of an irreverent reviewer, to the protest once made by a bookseller to the learned author of Prideaux's 'Connection,' [5] 'Pray,

[1] *Ante*, vol. i. 437.
[2] *Life of Lord Campbell*, ii. 114.
[3] *Ibid.* ii. 112.
[4] Pp. 138–405.
[5] *The Old and New Testament Connected in the History of the Jews and Neighbouring Nations.*

doctor, couldn't you put some fun into it?' The trial and the general proceedings in the privileges dispute resulted in a breach between Campbell and Lord Denman which was never healed, and had a painful sequel.[1]

During these later years of Lord Melbourne's Administration Campbell's own professional prospects had been causing him no small anxiety. Twice had the Whigs been saved by what must have seemed a special intervention of providence—first by the death of William IV., and then by the Bedchamber fiasco. But they were clearly tottering to their fall, and what was to become of their Attorney-General? He was wearied of the constant strain at the Bar, which was beginning to tell even upon his tough and indomitable nature. Sir Samuel Romilly and his own father-in-law were warning examples of lawyers left stranded long after the time when they had earned an honourable discharge. But the chiefs of the English Judiciary were all firm in their seat, and there seemed no prospect of a vacancy. The scheme to carve a new office out of the Chancellorship had come to naught,[2] and in 1839 we find Campbell seriously meditating whether he should not write *finis* to his career by accepting a puisne judgeship.[3] In the following year Lord Cottenham introduced a Bill for the creation of two additional Vice-Chancellorships, and it was rumoured[4] that one of these was destined for the Attorney-General—a rumour, it should be said, to which his published letters lend no countenance. Suddenly came a gleam of hope from across the Irish Channel,

> via prima salutis,
> Quod minime reris, Graiâ pandetur ab urbe.[5]

As far back as September 1839, Lord Cottenham, who

[1] *Vide infra*, 195. Campbell is said to have prided himself on drawing up the warrant for the imprisonment of the Sheriffs of London in so vague and general a form that its legality could not be tested in any Court of law.

[2] *Ante*, vol. i. 397. [3] *Life of Lord Campbell*, ii. 124.

[4] Miss Martineau, *Biographical Sketches*, 248. [5] *Æneid*, vi. 96.

was kept strongly impressed with Campbell's claims to promotion, had urged upon Lord John Russell and the Prime Minister that, possibly, Lord Plunket might be induced to resign the Chancellorship of Ireland in his favour.[1] Lord Ebrington, the Lord Lieutenant, was informed by Lord Melbourne that it would be convenient to the Government if they could get the Irish Seals for the Attorney-General, and consented to 'sound' the holder 'without giving him uneasiness.' In a dignified letter, which showed how deeply his feelings had been wounded by the ungracious suggestion, Plunket replied that, although, at his time of life, the wish to retire would be a very natural one, he had never expressed any such wish, and he should never have thought it becoming to withdraw himself at the present juncture from the discharge of public duty. 'After the communication of Lord Melbourne's wishes he could not continue in office, but it was merely for that reason that he came to such a decision.'[2]

Melbourne was smitten with remorse, and wrote to the Chancellor, earnestly entreating him 'to think of what had passed no more than if it had never taken place.'[3] The matter seemed at an end, but somehow or other it had got into the Press, where it was sedulously kept alive, and Campbell was still on the *qui vive*. He devoted two or three hours per diem during the long vacation of 1840 to studying the practice of the Court of Chancery and Equity Pleading.

I hear nothing more, he writes to his brother, of the Irish Chancellorship, and I take it for granted that the rumour of Plunket's resignation is unfounded. The Irish Chancellorship would not be by any means a desirable destiny for me, but it is better than anything else that is open.[4]

[1] Torrens' *Life of Melbourne*, ii. 360; *Life of Lord Plunket*, by Lord Rathmore, ii. 330.

[2] The date of the letter is October 18, 1839 (*ibid.* ii. 331).

[3] *Plunket*, ii. 333.

[4] *Life of Lord Campbell*, ii. 138.

So far was Plunket from resigning that at the beginning of the autumn sittings

> the hale old man resumed his seat in the Court of Chancery, hearing arguments with the same impartial and discriminative care, and delivering judgments with the same lucidity as formerly; and when the day's work was done he might be seen walking home as usual with step quick and firm. No falling off was perceptible in his powers of body or mind. He continued to command the confidence of suitors and the homage of the Bar.[1]

Suddenly, in June 1841, after the Ministerial defeat on the vote of confidence, when the session was being wound up with a view to an immediate dissolution, it was announced in the Hall of the Four Courts in Dublin that the Chancellor had been called on to resign in order to make way for the English Attorney-General. The precise history of the transaction is difficult to disentangle. Campbell declares [2] that as soon as the dissolution was resolved on Lord John Russell and Lord Melbourne spontaneously intimated to him that they wished him to hold the Great Seal of Ireland as successor to Lord Plunket, and to take a peerage. Not unnaturally he assumed that Plunket's consent had been obtained, and indeed Melbourne had written to the latter on the 6th of the month [3] urging that now was the occasion for him to seek retirement and repose. A few days afterwards he learnt from the Prime Minister that the Chancellor of Ireland refused to resign.[4] Someone had blundered, and Campbell gave free expression to his wrath, but, finding that the field in Edinburgh was still clear for him, he agreed to remain Attorney-General.

Melbourne had already written him a letter highly appreciative of his decision, when the return to Dublin of Lord Fortescue, as Lord Ebrington had now become, put an end to the *impasse*. By urging it as a personal

[1] *Life of Melbourne*, ii. 361. [2] *Life*, ii. 141.
[3] *Melbourne Papers*, 421, and *Life of Plunket*, ii. 334.
[4] *Life of Lord Campbell*, ii. 141, and *Life of Plunket*, ii. 335.

favour, and by representing to him that he could not, without disgrace, refuse to give effect to the qualified offer of resignation contained in his letter of 1839, the Lord Lieutenant succeeded in putting the requisite pressure upon the reluctant Chancellor, who wrote back on June 17 that such favours had been conferred upon him and his family by the Government that he could no longer refuse to do what they so earnestly wished.[1] But when it came to bidding farewell to the Bar, Plunket could no longer contain himself. The resignation was forced upon him, he burst out, to make way for Sir John Campbell; he himself was no party to the agreement, he highly disapproved of it, and the office ought to be held by a member of the Irish Bar.[2] Such at least is the story given by Lord Campbell, but in Lord Plunket's farewell address, as printed by his grandson, Lord Rathmore, he refrains carefully from any topic or language inconsistent with his dignity.[3] If he ever claimed the office for a member of the Irish Bar, as of right, he was on weaker ground. The interim holder of the Irish Seal in 1835, Sir Edward Sugden, had filled the post to admiration and was destined to do so again. And Campbell, by agreeing to waive the statutory pension in case his party should be defeated at the polls, removed one of the strongest objections which Plunket is said to have raised in his correspondence with Lord Fortescue.[4] None the less the affair was an odious and discreditable one, which weighed heavily upon the Whig Cabinet during the general election that followed so swiftly.

I must confess that to my mind Campbell emerges with much cleaner hands than his superiors, than Cottenham, who first suggested the idea of Plunket's resignation, than Melbourne, who had him 'sounded,' than Lord Fortescue, who finally coerced him into

[1] *Life of Lord Plunket*, ii. 338.
[2] *Life of Lord Campbell*, ii. 142. [3] *Life of Plunket.*
[4] *Life of Lord Campbell*, ii. 142–3. No trace of this is to be found in the *Life of Plunket.*

surrender. Campbell was never backward in pushing himself, and we can well believe that his importunities had become a source of considerable embarrassment, both to the Premier and the Chancellor. But his claims, it must be admitted, were very great: with the solitary exception of Sir Dudley Ryder he had held the office of Attorney-General longer than any one since Thurlow. Both in Parliament and as head of the law he had been thoroughly efficient, and he had had extraordinarily bad luck in the way of promotion. Moreover, he appears to have been under the genuine impression, when the offer was made to him in June 1841, that Plunket had actually resigned; and much of the obloquy with which he was assailed, both posthumously and in his life-time, was occasioned by the erroneous belief that he was in possession of a pension of 4,000*l.* a year for having held the Great Seal of Ireland for six weeks.

He took the title of Baron Campbell of St. Andrews, and after having been duly sworn of the Privy Council, crossed over to Ireland. He encountered a very heavy gale on the passage from Holyhead to Dublin, and Plunket and his secretary communed grimly over the falling glass and the howling tempest. The latter opined that, even if the invading Chancellor were not drowned, he would be mighty sick; 'perhaps he may throw up the seals,' suggested Plunket.[1] Campbell only sat in Court for a day or two; Plunket had almost cleared the list, and the Long Vacation was close at hand. The Bar, who had bitterly protested against his employment, behaved with all possible civility, and Lord Campbell felt convinced that, if his tenure were prolonged he would be able to give universal satisfaction.[2] On the last day of term he pronounced a valedictory address, in which he indicated the lines on which he proposed to simplify and improve procedure. His

[1] Campbell says that he heard Lord Derby relate this *mot* at the Academy Dinner in May 1859.

[2] *Life of Lord Campbell*, ii. 148.

remarks occasioned some umbrage to the equity practitioners on both sides of the Channel, who considered that the speaker had not been long enough in the saddle to dogmatise; but when he uttered them (July 17) Campbell must have known that his chances of reforming the Irish Courts of Chancery had gone to zero.

The elections were practically over, leaving the Whigs in a large minority. On August 28, Lord Melbourne resigned; Campbell remained, nominally, Lord Chancellor of Ireland for a few weeks longer until Sugden resumed formal possession, and then he retired into private life, 'poor and pensionless,' as he tells us, and musing over the future of his 'tocherless' daughters. Those who had opportunity of dipping into his Lordship's fee-book, or glancing at the endorsement on his briefs, would have smiled at the protestation. Few men have ever turned five-and-thirty years at the Bar to such golden account. One serious piece of bad luck had marked his tenure of office. The aforesaid fee-book, his law library, and a vast mass of briefs and official papers were destroyed in the fire which consumed his chambers in Paper Buildings on March 6, 1838. Nothing was recovered from the ruins save the Attorney-General's Seal and the remains of an old watch that had belonged to his father. The fire was due to Maule's pernicious practice of reading in bed and going to sleep with the candle alight.[1]

[1] *Vide supra*, 138. Campbell had been a spectator of the fire which destroyed the old Houses of Parliament in October 1834. He received a slight hurt to his knee in helping to work the engines which saved Westminster Hall, and in addition had his pocket picked of 5*l.* and a handkerchief. He was the first peer to speak in the new House of Lords, defeating Brougham by a short head; a wheel of the latter's carriage had come off, and it was calumniously asserted that Campbell had bribed a servant to take out the linch-pin.

CHAPTER VIII

LIFE OF LORD CAMPBELL FROM HIS ACCEPTANCE OF A PEERAGE DOWN TO HIS APPOINTMENT AS LORD CHIEF JUSTICE

1841–1850

IT was not in Campbell's nature to be idle; it was a new sensation and he did not enjoy it.[1] The judicial work of the House of Lords and the Privy Council made certain inroads upon his time, but the days dragged heavily. The first fruits of his compulsory leisure appeared in 1842 in the shape of a volume of the speeches delivered by him at the Bar and in the House of Commons. It included, as we have seen, his address to the jury on behalf of Lord Melbourne. By an equally strange omission, it left out his speech in the Serjeants' case,[2] one of the ablest and most interesting of his legal arguments. It was generally supposed that he was desirous of emulating the literary fame of Brougham. If so, he had adopted an unfortunate medium. His speeches are singularly devoid of grace and form, and they fill the non-professional reader with amazement both at Campbell's reputation and at his success in Court.

Nor did the terms in which he dedicated the volume to his brother create a more favourable impression.

[1] I can never hear this phrase without recalling a certain dialogue I once heard in Court between Lord Justice Vaughan Williams and the late Mr. Alfred Cock, who might have shared with Monckton Milnes the title of 'the cool of the evening.' Counsel had just finished with a witness when the Judge put a question, remarking after he had received his answer, 'I was wondering, Mr. Cock, why *you* didn't ask that.' 'I was much inclined to do so, my Lord, but I felt rather nervous.' 'And pray, Mr. Cock, how did you enjoy the sensation?'

[2] Manning's Report. *Ante*, vol. i. 435.

It may be, wrote the ex-Chancellor of Ireland, that, my aspirations and hopes proving delusive, my existence, in a short space of time, may be known only to my children; but they will be better pleased with the obscurity of their father than if he had gained dishonest fame; and they will have the consolation to reflect (*sic*) that he never abandoned his principles or his party, and that by remaining true to the cause of civil and religious liberty he always sought the good of his country and the happiness of mankind.

This was 'the pride that apes humility' with a vengeance. His Lordship was sharply informed that his prosperous and lucrative career had given him no right to arrogate to himself a place among the benefactors of mankind. He had been a painstaking and a skilful advocate, and had served his party well, but he had done no more.

What sacrifice, it was pertinently asked, did Sir John Campbell ever make to principle? What opportunity of distinction did he ever forego from diffidence? When was he ever prevented from asking for anything he wished by delicacy?

But there was a happier inspiration before him. Lady Holland once congratulated Campbell on three conspicuous pieces of good luck—his marriage, his purchase of Stratheden House in Kensington, and the selection of the 'Lives of the Chancellors' for his *magnum opus*.[1] It was a bold undertaking for a man of sixty-three who had no experience in historical composition, and no particular knowledge of legal antiquities, and who had discarded the pen for nearly forty years. He tells us that he met with little encouragement from any one to

[1] *Life of Lord Campbell*, ii. 171. Stratheden House fronted Hyde Park, and the threatened destruction of his quiet and amenities rendered him a vehement opponent of the Great Exhibition of 1851. Like Lord Brougham, he was a pronounced 'anti-exhibitionist,' and incurred some odium by denouncing the project in the House of Lords; but the glories of Paxton's Crystal Palace made a complete convert of him (*Life*, ii. 290, and see *Life of Duke of Argyll*, i. 340).

whom he mentioned the project, and he was strongly advised at any rate not to start before the post-Revolution chancellors. But he was convinced that the earlier holders of the Great Seal presented a good vehicle for sketches of the history and manners of the time in which they lived, and that ' by a proper selection and arrangement of facts and documents, with some appropriate observations, the lives of all the great men might be made interesting.'

Accordingly he persevered in his plan of presenting them in succession from the foundation of the monarchy, and he set to work to get up his period just as he would have embarked upon an unusually heavy and intricate brief. There was this difference, however, that here no fee was marked, and his remuneration was strictly a matter of *quantum meruit.*

By May 1845, working with all his indomitable industry, though not without an interlude of despondency during which he abandoned the task for some months, he had completed the first series down to 1689.

> Assuming it, he wrote, to be a ' standard work,' as it is at present denominated, I doubt whether any other of the same bulk was ever finished off more rapidly.[1]

In spite of the gloomy prognostications of his friends, Mr. John Murray agreed to print an edition of 1,250 copies on the ' half profit ' system, and in the middle of December the three thick octavos saw the light. From the first moment their success was unmistakable; a handsome article in the ' Quarterly ' from the pen of Lockhart started the chorus of approbation a fortnight before the book was in the hands of the public.[2]

> It is sufficient for us, wrote the ' Scorpion,' now aged and chastened with the accumulations of a life of sorrows,

[1] *Life of Lord Campbell.* ii. 195.

[2] *Quarterly Review,* lxxvii. 1; *Life of Lord Campbell,* ii. 195. The full title of the book was ' The Lives of the Lord Chancellors and Keepers of the Great Seal of England from the Earliest Times till the Reign of George IV. The First Series in three volumes.'

to thank his Lordship for the honest industry with which he has thus far prosecuted his large task, the general candour and liberality with which he has analysed the lives and characters of a long succession of influential magistrates and Ministers, and the manly style of his narrative, often diversified with happy description and instructive reflection, and but rarely blemished by silliness of sentiment or finery of phrase.

Congratulations and compliments poured in from all quarters. Peel expressed the great delight he had derived from the perusal of the 'Lives'; 'maidens of the loftiest station' assured the blushing author that his was the most charming book they had ever read, and Prince Albert thanked him in the Queen's name and his own for the amusement and instruction which they had derived.[1] Lyndhurst, with a grave irony which is suggestive of 'intelligent anticipation,' praised the work extravagantly, adding,

You throw out some reflections in a sly manner on living Chancellors. I take none of them myself; you could not mean me. But I hear that Brougham is much offended by your saying that Lord Ellesmere did not waste his time on the Bench by writing notes and preparing speeches in Parliament.[2]

Campbell replied that he had in his mind only the bad practices of Turketel[3] and Saint Swithin.

No less satisfactory was the substantial progress of the book; the first edition was subscribed for by the trade before publication, and a second edition of 2,000 went off with the greatest celerity.[4] In 1846 appeared

[1] *Life of Lord Campbell*, ii. 196–8.

[2] *Ibid.* ii. 196, and *vide supra*, 19.

[3] Thurcytel is the more usual spelling of the name of the good abbot of Croyland.

[4] On the eve of the publication of his own first two volumes, Macaulay records in his diary for November 23, 1848 (*Life*, ii. 243) 'I find that MacCulloch and Hastie have a wager on the sale of my history. MacCulloch has betted that it will sell better than Lord Campbell's book. Hastie bets on Lord Campbell.' Macaulay and Campbell, it will be remembered, had been colleagues in the representation of Edinburgh.

the second series, carrying the narrative from Serjeant Maynard to the death of Lord Thurlow. The third, published in 1847, contained the Lives of Wedderburn, Erskine, and Eldon. Then, turning to the Chief Justices of the King's Bench and working with the same extraordinary rapidity, he had, by the end of 1849, completed his task as far as the resignation of Lord Mansfield. After that date his leisure was brought to a sudden termination, and the final volume, dealing with Kenyon, Ellenborough, and Tenterden, was delayed until 1857. During these years he was working *pari passu* at a concluding volume of the Chancellors, which comprised Lyndhurst and Brougham. The memoir of the former stops short in August 1858, and with the exception of a few pages written in April 1859, the 'Life of Brougham' is only carried down to 1856. They both survived their biographer, and the volume was not published until December 1868, some months after the tomb had closed on the last of the victims.

The only other literary accomplishment of Lord Campbell was a little treatise published in 1859, 'Shakespeare's Legal Attainments considered in a Letter to J. Payne Collier,' which converted Macaulay, amongst others, to the view that the Swan of Avon must have been at some time or other the occupant of a desk in an attorney's office.[1] According to a disparaging statement of the late Lord Coleridge,[2] Campbell 'did little more, I believe, than reprint a paper of a literary attorney at Newcastle without any acknowledgment.' The 'Literary Attorney' was a certain Mr. William Lowes Rushton, who, as a matter of fact, was a member of the Bar, and had published 'Shakespeare a Lawyer' in 1858, and 'Shakespeare's Legal Maxims' in 1859.[3] After comparing the respective works, I cannot see any good ground for the charge of plagiarism. They naturally use

[1] *Life of Lord Campbell*, ii. 362. [2] *Life of Lord Coleridge*, ii. 58.

[3] *Shakespeare a Lawyer* contains only 50 pages (of rather larger capacity, it is true) to 117 of Campbell's little book.

the same material; Rushton is the more complete and succinct. Campbell is garrulous, full of amusing egotism, and of the spirit of book-making, but all the more readable in consequence. For the following estimate of the theory I am indebted to my friend Mr. Sidney Lee:

As for 'Shakespeare's Legal Acquirements,' by Lord Campbell, it is no doubt quite an interesting tractate, and is the parent of a progeny of books on the same subject, most of them American. One of its effects has been to bolster up the Baconian craze. For this result Campbell was, of course, not responsible. But, as I have pointed out in my 'Great Englishmen,' those who claim Shakespeare to have been exceptionally learned in the law seem to have a narrow acquaintance with Elizabethan literature outside the Shakespearean drama, and make no allowance for the fact that the legal terminology in Shakespeare is found in even greater abundance in the work of contemporary poets and dramatists who are positively known to have enjoyed no legal training. My explanation of the fact is—though, of course, it is a merely personal view—that the young lawyers of the Inns of Court lived on close terms of intimacy with the men of letters in London, and so familiarised the writers with much legal jargon. Elizabethans of all sorts, moreover, including men of letters, were extraordinarily litigious, as the legal records show. Most authors figured at one time or another in a lawsuit. Interest in legal procedure was thus very widely distributed. Finally, I fancy that Lord Campbell and others overlooked the important circumstance that Shakespeare's law is frequently quite erroneous—*e.g.* 'The Merchant of Venice' trial.

It would not be surprising if Campbell were to be remembered as 'the noble and biographical friend' of Wetherell's burlesque oration, long after he has been forgotten as a politician and a judge. The 'Lives of the Chancellors and the Chief Justices' have been classed by a very competent critic [1] among 'the most censurable publications in our literature.' Yet riddled with criticism, and adding, as was said at the time, a new terror to death,

[1] G. P. Macdonell in *Dict. Nat. Biog.* viii. 383.

they still remain a classic. Their author has been charged with unblushing plagiarism, with fundamental inaccuracy, with slipshod prolixity, and a style which is equally regardless of dignity and of the laws of syntax. It has been said of him that he pillaged the collections of earlier writers after the fashion of a Cornish wrecker, and again, varying the metaphor, that he treated his predecessors as if they were waifs on a manor. Indignant sufferers complained that, while he was profuse in his gratitude for such trifling favours as the copying of an inscription on a tombstone, he would transcribe whole pages of material, ancient and modern, without the slightest intimation of indebtedness.

Rich as this periodical has been, protested an aggrieved writer, in biographies of the old judges, Lord Chancellors, and Lord Keepers, throughout the goodly tomes before us, though glittering with its spoils, the 'Law Magazine' is not once named or alluded to. No department of literature has received more accessions of wealth during the last twenty years than legal anecdotes and history. 'The Life of Coke and Memoirs of his Contemporaries,' a work replete with valuable lore respecting Bacon, by Mr. Johnson, the 'Essay on the Life and Character of Bacon' by Martin, his 'Life' by Woolryche, the 'Lives of Eminent Lawyers' by the late Henry Roscoe, and the memoirs of Lord Keeper Sir Nicholas Bacon, of Lord Keeper Coventry, of Whitelocke, of Lord Nottingham, are all appropriated by Lord Campbell, and all unacknowledged. However free the use that has been made of these works, no reference appears; their very titles might have been unknown to him.[1]

[1] *Law Magazine*, xxxv. 119. To the list given above the reviewer adds *Oldmixon's Lives of the Chancellors, Keepers, and Commissioners of the Great Seal by an Impartial Hand*, to which Campbell never alludes, though his acquaintance with it was obvious. It should be said, in fairness, that the passage I have quoted in the text refers only to the 1st edition of the 1st series of Campbell's *Lives of the Chancellors*. In the later editions of those volumes and in the subsequent series, acknowledgment, if not always adequate, is made to the *Law Magazine*. Among those who complained most bitterly on the score of plagiarism was Miss Strickland. One afternoon, in the House of Lords, Brougham pointed out to Charles Phillips 'an elderly female

His fondness for recording coarse professional anecdotes and pleasantries exposed him to the charge that

his studies were so tinctured with the times of the Tudors and Stuarts that he had taken his notions of what may be used in refined society from the strange freedom of those unpolished days.

And he has dragged in without any provocation a mass of 'scandal about Queen Elizabeth,' which is hardly to be distinguished from the class of literature against which he himself afterwards legislated. Nevertheless the fact remains, that his works form an indispensable part of every lawyer's library, and that they are read because they are eminently readable. They form the greatest existing storehouse, however the contents have been acquired,[1] of legal anecdote and biography. If his jocosity is not always seasonable, or in taste, it seldom fails to amuse, and he has been not inaptly compared with the elephant in Eden who 'wreathed his lithe proboscis' for the delectation of our first parents. His long experience as a leader at Nisi Prius had given him dexterity in the art of telling a story, had taught him how best to marshal his material, and had made him a master of the forensic devices by which the flagging attention of an audience can best be revived and retained.

As a history of our legal institutions and of the growth of equitable jurisdiction, the Lives possess little value.

in a poke bonnet standing at the bar of the House.' 'Do you see the old lady standing there? She is Miss Strickland, waiting to reproach Campbell with his literary larcenies; he will escape by the back way' (Ballantine, p. 120). What a pity, as Ballantine suggests, that we have not an account of the interview from the pen of Brougham. The noble biographer (*Life*, ii. 222) declares that he introduced himself to her, and after a quarter of an hour's conversation wrung from her the confession: 'Well, Lord Campbell, I do declare you are the most amiable man I ever met with.'

[1] Campbell himself tells the story of 'a modern deceased Lord Chancellor who was said to have collected a very complete law library by borrowing books from the Bar which he forgot to return.' The date of the passage (1846) acquits all the Chancellors whose lives are recorded in these volumes.

Gross darkness still brooded over the beginnings of the Common Law, and Campbell was not the man to dispel it. The earlier biographies are scanty compilations saved from dulness by the vivacity of the narrative, and by the constant intrusion of the author's irrepressible personality. But when he approaches his own century, when once, indeed, he is across the Rubicon of the glorious Revolution, we become aware of his very remarkable qualifications for the task he had assumed. It is not only that he proves himself on occasion a most admirable delineator of character, true, terse, and lively, but he is the repository of a vast mass of tradition, legal and general, which, but for him, might easily have perished. He himself had heard Thurlow supporting a divorce Bill in the House of Lords;[1] he had seen Kenyon explaining the pleadings to the occupants of the students' box in the Guildhall; and one of the judges on his first circuit had been called to the Bar in 1762.[2] He was steeped in all the scandal of the Bar mess and of the Benchers' tables. The gossip and the legends of the Northern

[1] *Lives of Chancellors*, vii. 153. 'At last there walked in, supported by a staff, a figure bent with age, dressed in an old-fashioned grey coat, with breeches and gaiters of the same stuff, a brown scratch-wig, tremendous white bushy eyebrows, eyes still sparkling with intelligence—dreadful crowsfeet round them—very deep lines in his countenance, and shrivelled complexion of a sallow hue, all indicating much greater senility than was to be expected from the date of his birth as laid down in the peerage. At this distance of time I retain the most lively recollection of his appearance, his manner, and his reasoning.' Lord Campbell fixes the date as a few days after his entrance at Lincoln's Inn, and he adds a characteristic note. 'At the first public masquerade which I attended in London, which was soon after this, there was a character which professed to be Lord Chancellor Thurlow, dressed in the Chancellor's robes, band, and full bottom wig. I am sorry to say that, to the amusement of the audience, he not only made loud speeches, but swore many profane oaths.' How different from the decorous appearance of Lord Chief Justice Campbell at the Queen's Fancy Dress Ball in June 1851. On that occasion the guests were commanded to appear in costumes of Charles II., and the Chief Justice appropriately went as Sir Matthew Hale in black velvet coif, a beard with moustache, and a pair of shoes with red heels and rosettes (*Life of Lord Campbell*, ii. 290).

[2] *Vide supra*, 131.

Circuit were familiar to him from the lips of his father-in-law and a score of other raconteurs.[1] Moreover he had the enormous advantage of portraying an existence every phase of which save one he had himself gone through. The Law Courts and the Senate were his native heath; he had drunk delight of battle with his peers on either side of Westminster Hall. He had been poor, ambitious, successful, he had fought *à toute outrance* for every coign of vantage. The taste for intrigue with which he was so freely credited gave him a clue through the dark passages of history which simpler souls than plain John Campbell might have missed. Even his severest detractor admitted his gifts and resources as an annalist, and besought him, in allusion to a rumour of his future projects, to leave the Irish Chancellors to rest in their graves, take a bolder flight, and attempt the memoirs of his own time. The autobiographical fragment which forms the basis of his Life as edited by Mrs. Hardcastle is suggestive of the success which he might have achieved in such a task accomplished in his own peculiar manner.[2]

But the 'Lives' are full of great and glaring faults, some of the head, others of the heart. The errors of fact and date, strange monuments of perversity as some of them must ever remain,[3] were the inevitable consequences of his headlong methods of composition, and he was much too rapid and slovenly a writer to care for the *nuances* of style, or be trammelled over-much by the

[1] His anecdotes, however, were not always remarkable either for their novelty or their accuracy, or for any scrupulous care as to whether they were attributed to the rightful claimant. 'Who could be Lord Campbell's authority for that story?' was once asked in company. 'Oh,' was the rejoinder, 'it was a distortion of one of old ——'s lies. The Chief Justice is very fond of *re*lying on him.'

[2] One of the few pieces of good fortune that can be credited to the luckless House of Stuart was Campbell's abandonment of his project to attempt the Life of Charles I. (*Life*, ii. 230).

[3] An epigram of the day parodied Longfellow to this effect:

Lives of great men misinform us,
Campbell's Lives in this sublime:
Errors frightfully enormous,
Misprints on the sands of time.

bonds of syntax. Long years in Court, where the first word that came uppermost was generally as good as another, and where a full stop was the accident most to be dreaded, had endowed him with a fatal fluency. The liberties and familiarities which he permitted himself to take with our language are remarkable, and a writer in the 'Law Magazine'[1] has made a curious collection of phrases, illustrative of his addiction to 'vulgar, homely, colloquial, and ungrammatical English.' Yet, although at times he mistakes rudeness for simplicity and coarseness for wit, the unsophisticated vernacular is not without its charm, and Lord Campbell might well have pleaded with Gorgo in Theocritus:

Πελοποννασιστὶ λαλεῦμες,
Δωρίσδεν δ' ἔξεστι, δοκῶ, τοῖς Δωριέεσσι.[2]

Nor is the reader inclined to cavil over-much at the transparent egotism which pervades his narrative. There certainly was a superabundance of Ego in his Kosmos, to quote Kipling's German naturalist, but it is an amiable weakness, and most pardonable in a man of Campbell's achievements. Westminster Hall smiled, but in no unkindly fashion, when the noble biographer declared in all gravity that

from daily and nightly perusal of the 'Advancement of Learning,' of the 'De Augmentis,' and the 'Novum Organon,' he had humbly striven to initiate himself in the methods of observation and induction.

Indeed the perpetual personalia constitute one of the most amusing features of the whole work, and we cheerfully tolerate the references to 'my laborious researches,' and to 'Lord Campbell's speeches,' and even the shade of Stockdale *v.* Hansard, which appears with a regularity and an irrelevancy that remind one of the intrusion of King Charles's head into a certain memorial. We smile at the thought of his ancient grievance over

[1] Vol. xxxv. 99.

[2] *Idyl.* xv. 92.

the Mastership of the Rolls, when he tells us that 'the silly notion had not then sprung up that a common lawyer was unfit to be an equity judge,' and we admire the naïveté with which he unconsciously attributes his own foibles and his own standards of conduct to the subjects of his biography.

One of the gravest blots on his literary scutcheon is the carping, sneering tone which he only too frequently employs towards those who have fallen short of his own measure of success, whether they be puisne judges or 'sleepy serjeants,' or 'real property lawyers.' He had inherited Mrs. Candour's art of tearing the characters of her friends to pieces with the utmost kindness. He owed everything to the Bar—his title, his wealth, his fame; yet he speaks of his own profession in language of constant and almost systematic disparagement. We have recently had the painful example of the 'Reminiscences' of Sir Henry Hawkins, but Lord Campbell is a more dangerous offender. So long as he has his laugh, the credit of the law, as an honourable and liberal profession, counts for nothing. In the bitter words of Lord Lyndhurst,[1] he had grown so accustomed to relate degrading anecdotes of his predecessors in office that his feelings had become blunted. There is little of generosity towards the living, of justice towards the dead. Of the strict obligations of an historian and a biographer he possesses, in spite of his constant protestations, not the slightest inkling. An over-lively imagination has allowed him to re-create the past after his own fashion, to mingle sea and sky, to penetrate the secrets of kings' chambers, and to produce as solid fact whatever his fancy persuades him might or ought to have been said or done.

Nor does he appear to have realised that in volunteering to write the lives of professional rivals and political opponents he was undertaking a task of exceptional delicacy. Utterly reckless of the pain he might cause, of the lasting dishonour he might be reflecting upon

[1] Hansard, cxlvi. 1358.

those whose lips were closed for ever, he pours out his constant flow of easy and entertaining and highly profitable narrative. He has been compared to 'a Malay running a literary muck, striking right and left with so sublime an impartiality that scarcely a man he jostles in the crowd of public characters he threads escapes unharmed.'[1] What a handle he gave to the blasphemers can best be illustrated from the title given to an American work published in New York in 1856: '*Atrocious Judges: Lives of Judges Infamous as Tools of Tyrants and Instruments of Oppression. Compiled from the Judicial Biographies of John Lord Campbell, Lord Chief Justice of England.*'

The climax was reached in the deplorable 'Lives of Lyndhurst and Brougham,' of which it has been aptly said that they did some injustice to Brougham, much to Lyndhurst, most to Lord Campbell himself. Sir Theodore Martin, in his exposure of this volume, is only one among a numerous host of the curators of the fame of the dead.[2] Sir Harris Nicolas has done something towards rescuing the memory of Sir Christopher Hatton; Mr. Christie has performed a similar service for Lord Shaftesbury; Mr. H. B. Irving has largely dissipated the myths with which Lord Campbell has smothered the early years of Jeffreys.[3] Lord Kenyon has found a descendant to clear away a mass of misrepresentations which are based on idle gossip,[4] while Lord St. Leonards, as we have already seen, lived to defend himself and his two illustrious predecessors.

And at the risk of sharing with Lord Campbell the imputation of egotism, I must add my own experiences. Ten years ago I was intrusted by the present Lord Ellenborough with the task of investigating the charges of

[1] The *Times*, June 24, 1861.

[2] I owe this phrase to Miss Martineau (*Biog. Sketches*, 251).

[3] And compare a paper on this subject by Professor Churton Collins in the *National Review* for September 1906.

[4] The author declares very pungently that most of the anecdotes told of the Chief Justice have been applied to every judge since Lord Hardwicke, and the rest are entirely devoid of foundation.

partiality and unfairness brought against his grandfather in connection with the trial of Lord Cochrane.[1] The main and only reputable source for them was Lord Campbell's Life of the great Chief Justice, and I discovered that in something like two pages and a half he had committed almost every conceivable error of fact.[2] He was writing, it is true, some forty years after the date of the trial, but he had abundant material at his disposal. It was the *cause célèbre* of 1814; Campbell was then a leading junior in full practice, and though, from the time of year (June 8), he may probably have been on circuit,[3] he must have heard the case canvassed from end to end, wherever barristers did congregate. His father-in-law was one of Lord Cochrane's counsel, and the case would have been fought over and over with 'damnable iteration' at Scarlett's dinner-table. Moreover, Gurney's shorthand notes of the trial had been printed by order of the House of Commons for circulation among its members, and it is still a common book. With all these means of constructing an accurate narrative at his disposal, Lord Campbell preferred to trust to his own vague recollections of a most complicated story, and to give to the world an utterly misleading version of the trial and of the incidents leading up to it. It was a striking lesson, and it made me reluctantly assent to the dictum of the writer in the 'Dictionary of National Biography,'[4] that no one who has ever followed Lord Campbell to the sources of his information will ever trust him again.

Yet, when all is said, there is a certain broad humanity about Lord Campbell's 'Lives' and a winning discursiveness, which retain for them on our shelves and in our affections a priority which we deny to books of far greater excellence and authority. The lawyer goes to them in his lighter hours as the scholar turns to Burton's 'Anatomy'

[1] See *ante*, vol. i. 200.
[2] *The Trial of Lord Cochrane before Lord Ellenborough*, chapter xii.
[3] His diary does not give any assistance on this point.
[4] *Dict. of Nat. Biog.* viii. 383.

and the lover of classic English to Johnson's 'Poets.' Making all deductions, the delineation of some of Campbell's *dramatis personæ* will challenge comparison with the best biographies in the language. The lives of Macclesfield and Thurlow[1] and Mansfield, to name only the very best, will ever rank in the forefront of our literature. And that we may take leave of Lord Campbell as a man of letters with an example of his better self before us, let me quote the following generous testimony to one of his most formidable rivals at the Bar :

Here, in the Temple Church, I saw Thurlow reposing, when, nearly forty years after, at the conclusion of funeral rites as grand and far more affecting, I assisted in depositing the body of my departed friend, Sir William Follett, by his side. May I be allowed to pay a passing tribute of respect to the memory of this most eminent, amiable, and virtuous man ? If it had pleased Providence to prolong his days he would have afforded a nobler subject for some future biographer than most of those whose career it has been my task to delineate. When he was prematurely cut off, the highest office of the law was within his reach ; and I make no doubt that by the great distinction he would have acquired as a judge, as a statesman, and as an orator a deep interest would have been given to all the incidents of his past life which they want with the vulgar herd of mankind, because he never sat on the Bench or had titles of nobility conferred upon him. One most remarkable circumstance would have been told respecting his rise to be the most popular advocate of the day, to be Attorney-General, and to be a powerful debater in the House of Commons—that it was wholly unaccompanied by envy. Those who have outstripped their competitors have often a great drawback upon their satisfaction by observing the grudging and ill-will with which, by some, their success is beheld. Such were Follett's inoffensive

[1] Writing in 1847, Lord Campbell gives some very interesting extracts anent Lord Thurlow from Creevey's journal, then and for long years afterwards unpublished. Sir Herbert Maxwell has somewhat unnecessarily bowdlerised them ; compare *Lives of the Chancellors*, vii. 284, 288, with Creevey, i. 60 *et seq.*, and *Law Magazine*, xxxvii. 29, from which latter source Campbell, I imagine, conveyed the passage, though he does not state the fact.

manners and unquestioned authority that all rejoiced at every step he attained, as all wept when he was snatched away from the still higher honours which seemed to be awaiting him.[1]

Towards the close of his literary labours the amount of leisure at Campbell's disposal was materially abridged. On his accession to office, in July 1846, Lord John Russell offered him the Presidency of the Duchy of Lancaster, with a seat in the Cabinet. It was a disappointment, as he frankly admits, for, in spite of the intimation, conveyed to him some months earlier, that the Great Seal of Ireland would in future be held by an Irish lawyer, he had cherished a hope that he might be reinstated in his former office.[2] But the Plunket controversy had left disagreeable memories, and Lord John pressed upon him that the public good required the sacrifice of his private feelings.

The loss in point of salary was very considerable, but, as Chancellor of the Duchy, Lord Campbell consoled himself by the thought that he was in a more dignified, as well as in a more agreeable, situation. Not the least agreeable of its incidents were the dinners, in which he loved to gather around him Ministers and ex-Ministers, Peelites and Protectionists, together with the heads, past and present, of the law, a mixed and goodly company in which the merriment waxed fast and furious, and Brougham and Lyndhurst vied with each other in boyish exuberance of spirits.[3] His duties brought him into closer connection with the Court, where he and Lady Campbell had always been favourites, and he was thrown not unfrequently into friendly intercourse with the Duke of Wellington, now finally withdrawn from the political arena. The biographer of Hyde and Whitelocke was able to remind the victor of Waterloo that the battle of Edgehill had also been fought on a Sunday; and, in return, 'Lord Cammel,' as the Duke always

[1] *Lives of the Chancellors*, vii. 392 *n.*
[2] *Life of Lord Campbell*, ii. 200–201.
[3] *Ibid.* ii. 220, and *ante*, vol. i. 155.

called him, was introduced by that warrior to a little boy whom history now knows as His Majesty King Edward VII.[1]

But though the Government held its own, it did little more; the Whig horizon was overcast, and Campbell may be pardoned if he looked anxiously for some haven where the ebb and flow of parties might leave him untouched. The serious illness of the Lord Chancellor in May 1849[2] had seemed to promise a vacancy on the Woolsack, but like Major Bagstock, Lord Cottenham 'was tough, Sir, devilish tough,' and, before his resignation was tendered, a year later, much had happened.

On April 14, 1849, Lord Denman, then in his seventieth year, had a paralytic seizure, which for the moment destroyed the power of his right side.[3] The skill of his medical attendants restored him temporarily to health, and in spite of their remonstrances, he presided in his Court during the whole of Trinity Term, and made two speeches in the House of Lords, which betrayed no diminution in his mental or physical powers. When the summer circuit began he remained in London, taking the business of Chamber Judge, but on July 21 he underwent another attack. The nature of his illness had not been made public, but there was a general rumour as to its character, and it was recognised that a return to the full discharge of his duties was most improbable. On July 27 Lyndhurst pleasantly suggested to Campbell that he would now have his choice of being Chancellor or Chief Justice, a piece of frankness at which the latter professed to be deeply shocked, though, on Wilde's appointment to the Common Pleas in 1846, he had received an assurance from the Prime Minister that 'if a vacancy should occur in the office of Chief Justice of the Queen's Bench, and my appointment would be deemed advisable, it would take place.'[4]

[1] *Life of Lord Campbell*, ii. 241.
[2] *Ante*, vol. i. 415.
[3] Arnould's *Life of Lord Denman*, ii. 272.
[4] *Life of Lord Campbell*, ii. 202, 256.

Denman fought hard against the inevitable. In touching letters to his puisnes, he expressed his intention of sticking to the ship as long as there was any reasonable prospect of his being able to sit again,[1] and he obtained from Sir Benjamin Brodie a formal opinion that if he abstained from work till after Christmas there was a possibility that he might then go back to work. But from a private letter written to Brougham by the great physician, it is apparent that the advice was only given to break the shock and prepare the Chief Justice for resignation at the beginning of the new year.[2]

Brougham, whose affection for Denman was genuine, and whose regard for 'Jock' was, at the best, equivocal, could not resist his natural craving to have a finger in the pie.[3] He passed Brodie's letter on to Lord Campbell, and the latter gave it to Lord John with Brougham's 'love.'[4] The Prime Minister returned an encouraging answer. He had sounded Lord Cottenham, and the Chancellor considered that Campbell would be a fit successor; the Queen, he was confident, would sanction the appointment, but nothing could be done without a 'spontaneous resignation' on the part of Lord Denman.

This Brougham pledged himself to obtain by the end of the year, and in a letter to the Chief Justice he insisted forcibly, but not unkindly, that in duty to himself, to his family, and to the public, he ought not to hesitate a moment about retiring from his post.[5] Those who knew and loved him best were equally of opinion that the step could no longer be delayed, and on Christmas Day Sir Benjamin Brodie transmitted the joint opinion of himself and Sir Henry Holland that the Chief Justice ought to lose no time in proffering his resignation. Denman still held out, and applied to Sir

[1] *Life of Lord Denman*, ii. 277, 279.

[2] *Life of Lord Campbell*, ii. 260.

[3] I have suggested (*ante*, vol. i. 365) that Brougham's eagerness was largely due to a desire to see Campbell permanently shelved before the next vacancy on the Woolsack.

[4] *Life of Lord Campbell*, ii. 261. [5] *Life of Lord Denman*, ii. 282.

Thomas Watson, whose decision was equally inexorable: it would be unsafe in the highest degree, he said, for his Lordship again to exercise his judicial functions.[1] On February 28, 1850, Denman resigned, and on March 2, at a meeting of the Cabinet, Lord John presented Campbell to the assembled Counsellors as Chief Justice of England.

I have gone thus into detail on account of the highly coloured versions of the transaction which found their way into the press, and of which the following passage from the pen of Miss Martineau is no extreme sample:

It was in 1850 that his intimate friend Lord Campbell (who made his way through life very easy by calling everybody he had to do with his 'friend') discovered that Lord Denman was too old for his office. Lord Campbell urged so forcibly upon everybody the decline of his friend's powers that people who had not perceived it before began to think it must be so. Lord Denman declared himself perfectly up to his work; and his affectionate friend shook his head, and stirred up other people to appeal to Lord Denman's patriotism to retire before his functions should suffer further from the weight of years. Hurt, displeased, and reluctant, Lord Denman resigned his office, and his brisk septuagenarian censor nimbly stepped into it and enlivened with jokes the tribunal which had been graced by his predecessor's sweetness and majesty.[2]

Miss Martineau could give many points to Lord Campbell in the matter of innuendo and rhetoric. Lord Denman was one of her heroes, like Lord Durham, 'a verray perfight gentil knight,' and Campbell was personally antipathetic to her.[3] She could have had no

[1] *Life of Lord Denman*, ii. 287.

[2] *Biog. Sketches*, 244, and cf. 251. 'Lord Denman protested, as Lord Plunket had done, that he was perfectly well able to go through his duties; but Lord Campbell thought otherwise, and immediately the newspapers began to bewail Lord Denman's weight of years, and to predict that his sprightly comrade would soon be in his seat.'

[3] The unconquerable cheerfulness and the addiction to mild pleasantries, which had supported plain John Campbell through the toil and drudgery of his early years, had an aggravating effect upon Miss Martineau. She was especially nettled by his assumption that ladies

knowledge of the facts, or of Denman's real condition, nor is there any ground whatever for connecting Campbell with the press campaign, which urged the Chief Justice to retire. On the other hand, there is no reason to suppose that Campbell had any scruple about keeping Lord John Russell up to the mark. Since the virtual promise of the post in the preceding October, he had been in a position of no small embarrassment, while the course of events in the House of Commons rendered it more than likely that at the last moment a change of Government might dash the cup from his lips. Nor was the embarrassment lessened by the discovery that he himself was the chief obstacle in the way of Denman's resignation.

The controversies arising out of Stockdale *v.* Hansard, that veritable 'daughter of debate,' had produced an estrangement between the Chief Justice of the Queen's Bench and the ex-Attorney-General, which was aggravated by an ill-advised passage in the latter's 'Life of Holt.' [1]

According to the ancient traditions of Westminster Hall, the anticipations of high judicial qualities have been often disappointed. The celebrated advocate, when placed on the Bench, embraces the side of the plaintiff or the defendant with all his former zeal, and—unconscious of partiality or injustice—in his eagerness for victory becomes unfit fairly to appreciate conflicting evidence, arguments, and authorities. . . . *He who retains the high-mindedness and noble aspirations which distinguished his early career may, with the best intentions, be led astray into dangerous courses, and may bring about a collision between different authorities in the State which had long moved harmoniously, by indiscreetly attempting new*

were spoiled children, and to be coaxed as such; she found him 'politic flattering to an insulting degree, and prone to moralising in so trite a way as to be almost equally insulting. He was full of knowledge, and might have been inexhaustibly entertaining if he could have forgot his prudence and been natural' (*Autobiography*, i. 338).

[1] *Lives of the Chief Justices*, ii. 401; the passage is omitted in the later editions.

modes of redressing grievances and by an uncalled for display of heroism.

Denman had never forgiven the suggestion that his action in denouncing the claim to privilege set up by the House of Commons was due to the mere hope of attaining popular applause, and his illness was not favourable to a calm and unprejudiced attitude of mind. But, according to his biographer, the late Sir Joseph Arnould, his real objections to Campbell as a successor were of a kind not very easy to state.

They were not so much his indulgence in a few offensive insinuations in his books or sneers in his conversation. They were rather these, that he had always been a self-seeker, that the tone of his character was wanting in elevation, and his bearing deficient in that lofty self-respect and dignified courtesy which had so graced his predecessor.[1]

Brougham, who was thoroughly in his element in such an imbroglio, did his best to persuade the invalid to overlook the offensive extracts from the 'Lives'; but was met by a further objection, 'Campbell would behave ill to my puisnes, I must protect my puisnes.' Apprised of this, Lord John Russell appealed to the doyen of the Court, Sir John Taylor Coleridge, who assured him that though Lord Campbell was not the ideal chief they would have selected, he would meet with nothing but courtesy and respect at their hands. As we have seen, the matter was settled peremptorily by Sir Thomas Watson, but Campbell always considered that Coleridge had laid him under strong obligations by his answer, and on his appointment being at last secure, he asked John Duke Coleridge, son of the judge and afterwards himself Chief Justice of England, to become his 'marshall and associate.'[2]

[1] *Life of Lord Denman*, ii. 291.

[2] So it is stated in the *Life of Lord Coleridge*, i. 193 *n*; but, as I have heard Lord Coleridge tell the incident, the post which was offered him was that of Clerk of Assize on the Home Circuit, and it was clogged with a condition that he should vacate it eventually in

Thus terminated an episode which brought an amount of obloquy upon Campbell's shoulders for which I can find no justification. His persistency in keeping before the public eye and in claiming preferment on every possible occasion had given him a bad name, but Denman's best friends, including the members of his own family, deplored both the manner and the matter of the protest against his successor.[1]

favour of a son of Lord Campbell, then in India. Coleridge declined 'the fleshpots of Lord C.' at his father's advice, though not without regrets. Campbell never lost sight of him, nominating him to a revisership in 1851, to a commissionership of claims in the New Forest in 1854, and paying him the special compliment of offering him a silk gown unsolicited in 1861.

[1] See the letter from his eldest son and successor to Lord Campbell (*Life of Campbell*, ii. 327). Denman positively refused to part with the gold collar of the King's Bench, and it is now, I believe, in the possession of the Corporation of Derby. Campbell records in his diary how the Earl of Ellenborough offered him temporarily 'the use of the collar of S.S. which had been worn by Lord Mansfield, and through Lord Kenyon had come down to his father' (*Life*, ii. 272). This passage disposes of a curious story which Lord Coleridge used to tell how Mansfield was so chagrined by Pitt's refusal to make Buller Chief Justice that he declined to part with the chain to 'Taffy' Kenyon. The old chain of the Common Pleas, now worn by the Chief Justice of England, dates certainly from the time of Coke, if not from Sir Thomas More.

CHAPTER IX

LIFE OF LORD CAMPBELL AS CHIEF JUSTICE AND CHANCELLOR

1850–1861

ON March 5, 1850, Campbell was sworn in before Lord Chancellor Cottenham; he had previously been 'rung out' at Lincoln's Inn, and had received the complimentary retainer of ten guineas to plead for that society as a serjeant. The fee was promptly annexed by Brougham, to whom a practical joke was irresistible, and it was recovered with some difficulty by the anxious Chief Justice.[1] The only thing that remained to be done was the assumption of the coif, a ceremony which was duly accomplished. For some reason which I have never discovered, Campbell had always nurtured contempt and dislike for the degree of Serjeant-at-Law, and his writings are full of sneers and quips at the expense of the order, a dislike which is amply reciprocated by its learned historian.[2]

Though past his seventieth birthday, and almost exactly the same age as the veteran to whose chair he succeeded, Lord Campbell was still in his prime, mentally

[1] *Life of Lord Campbell*, ii. 274; since the abolition of Serjeants' Inn in 1877, the judges have retained membership of their old Inns of Court, and ringing out has become obsolete.

[2] Serjeant Pulling, *The Order of the Coif*, *passim*, and cf. the *Reminiscences of Serjeant Ballantine*. At a time when the serjeants included in their ranks such men as Shee, Manning, Hayes, and Pigott, Lord Campbell stigmatised them as 'a very degenerate race, deserving only to be swept away' (*Life of Lord Campbell*, ii. 277). Ballantine suggests that Campbell's contempt was due to the failure of men like Manning to turn their abilities to more lucrative account.

JOHN, LORD CAMPBELL, LORD CHIEF JUSTICE OF THE QUEEN'S BENCH

From a portrait by Thomas A. Wolnoth in the National Portrait Gallery

and physically. 'Thick-set as a navvy, as hard as nails,' was the graphic description of Fitzjames Stephen, whose first circuit brought him before the Chief Justice in 1854. Shortly before his death Lord Campbell told the late Mr. George Brodrick that he had never lost a tooth, and that he hoped the fact would be engraved on his tombstone.[1] A powerful constitution, temperate living,[2] a singularly happy domestic life, and it may not unfairly be added, 'a guid conceit o' himself,' had been proof against toil and ambition, and he now assumed without misgiving a burden to which, by common consent, he was admirably adapted.

During the nine years which had elapsed since he left the Bar there had been the usual crop of new rules, but the procedure of the Courts and the practice and pleading had been little affected. 'Jervis' and 'Archbold,' with the reports in the Law Journal, and some friendly talks with his old colleague, Baron Rolfe,[3] were sufficient equipment for the wily and experienced lawyer who had graduated under Tidd, and been chief law officer of the Crown for eight arduous years. From the first he showed complete mastery of his work, and the industry to which he owed so much of his success at the Bar did not desert him on the Bench. Lord St. Leonards has declared that Lord Campbell brought to his task a general knowledge of the law which probably has never been surpassed,[4] and in a passage in his 'History of the Criminal Law,'[5] Sir James Stephen has paid him a very impressive compliment.

It may be truly said that to hear in their happiest moments the summing up of such judges as Lord Campbell, Lord Chief Justice Erle, or Baron Parke was like listening,

[1] *Life of Sir James Fitzjames Stephen*, 140; *Memoirs and Impressions*, by the Hon. G. C. Brodrick, 128.

[2] For the simplicity of his regimen on the Bench, see his *Life*, ii. 290.

[3] *Life of Lord Campbell*, ii. 365.

[4] Hansard, clxiii. 1478.

[5] Vol. i. 456.

not only (to use Hobbes' famous expression) to law living and armed, but to justice itself.

Yet Campbell's demeanour on the Bench left a good deal to be desired. With his usual cheery complacency he was of opinion that he got on very well with the Bar,[1] but this is not altogether borne out by the testimony of some of those who appeared before him. Serjeant Ballantine in particular[2] (*quantum valeat*) charges him with being harsh and irritable to the last degree.

He had no compassion for weakness; he crushed when he ought to have striven to raise. It is of no value for a sufferer to be told, even if it be the fact, that under an offensive demeanour there exists a kind heart and amiable disposition; such knowledge affords no comfort to a young barrister who has been snubbed before his first client and the entire Court. Lord Campbell ought to have had mercy, for he was by no means himself insensible to applause, and sought it by not very dignified means.

Clearly this is the language of one who has smarted under the lash, but it is corroborated in set terms by Sir John Hollams,[3] who, moreover, uses Campbell as an illustration of the change which has come over the conduct of trial by jury during his lifetime.

In the early days to which I can refer the judge made very few remarks until he summed up. Notably, Lord Campbell repeatedly ejaculated, 'Go on—go on,' and when any point which he deemed immaterial was raised he complained of the waste of public time. If a question of law arose as to the construction of a document or other like matter, he would defer it until the proverbial luncheon-hour. He would then tell the jury they might retire for ten minutes, and he would say to counsel that he would, during the absence

[1] *Life of Lord Campbell*, ii. 275, and cf. *Random Recollections of the Midland Circuit*, 167; Bennett's *Leaves from a Reporter's Note Book*, 173, and *Autobiography of George Harris* (privately printed, 1888) where his affability and urbanity are extolled.

[2] *Reminiscences*, 124.

[3] *Jottings of an Old Solicitor*, 141.

of the jury, hear the point of law. He thus occupied the interval of ten minutes, and, having declined to stop the case and told counsel to address the jury, the learned judge retired to his own room for luncheon without regard to the speech of counsel—thus the business of the Court was not for a minute suspended, and the professional men had no interval at all.[1]

Lord Campbell was indeed 'hard as nails.' On one occasion, when he had sat till 10 o'clock at night, regardless of the fact that he had invited the Bar to dinner, he was found the next morning at 7 A.M. on Norwich platform, in a snowstorm, on his way back to London.[2] And the proceedings on motion for a new trial of a case heard before him at Stafford elicited the following facts:

It began at 9 on Monday morning, and the Court adjourned at 8 P.M. till 8 A.M. on Tuesday. The plaintiffs' case did not close until 8 o'clock that night, and then, when the defendant's leading counsel appealed to the Lord Chief Justice, the only man in Court who was not physically and mentally worn out, to be allowed to postpone his opening speech for the defendant, the only speech which the law allowed him, he met with a refusal.

We are not surprised to read that the new trial was granted by the Court of Common Pleas.[3]

His irritability would sometimes find vent in manner unseemly and ludicrous. Serjeant Ballantine has described how, wearied out by the prolixity of an eminent and imperturbable counsel, and having exhausted his usual phrases of disgust, he got up from his seat and marched up and down the Bench, casting at intervals the most furious glances at the offender. At last, 'folding his arms across his face, he leant, as if in absolute despair, against the wall, presenting a not inconsiderable amount of back surface to the audience'[4]—an attitude which was immortalised by the Frank Lockwood of the day.

[1] Hollams, 47. [2] *Ibid.* 51. [3] *Ibid.* 49.
[4] *Reminiscences*, 131.

Nor can Campbell be acquitted on another charge insinuated by the same authority; he dearly loved to be on the popular side, and he could seldom resist the temptation of playing to the gallery. To this propensity he yielded in unseemly fashion during the trial at which Father John Henry Newman, of the Edgbaston Oratory, failed to substantiate to the satisfaction of a Westminster special jury his accusation of immorality against Dr. Achilli, a once notorious Protestant lecturer from Italy.[1] The wave of feeling against Papal aggression was still running high, and there had been recent conspicuous secessions from the higher ranks of the Church of England. The Lord Chief Justice, without any particular provocation, but hugely to the delight of the crowd, avowed his disgust at seeing clergymen who wished to be Roman Catholics remaining in a Protestant church. And when the verdict was given for Achilli he was thought to have given too much countenance to the outburst of enthusiasm in Court. On the other hand, he gave umbrage to certain uncompromising Protestants by describing the Court of the Inquisition as being presided over by men of learning and piety.

Long experience at the Bar had taught him the secret of managing juries, and, happier than some eminent advocates, it did not desert him on the Bench. However impatient and overbearing with counsel, he never lost that combination of suavity and firmness which is irresistible with the twelve highly respectable and intelligent citizens in the box. His detractors even went so far as to charge him with 'wheedling, canny, obsequious attempts at directing verdicts.'[2] He had the knack of emphasising certain passages of the evidence in the course of his summing up, and of indicating, with a motion of

[1] June 22, 1852. The charge was one of criminal libel; the future cardinal was found guilty and sentenced to a fine of 100*l*. His counsel were Cockburn, Serjeant Wilkins, and Bramwell, the prosecution being represented by the Law Officers.

[2] *Law Magazine and Review*, x. 220.

the hand or otherwise, his approval or contempt; nor did he neglect any art by which his view of the case might be indicated to the jury. But there were occasions, when widespread prejudice and passion were aroused, on which his admonitions fell useless to the ground.

At the trial of the Royal British Bank directors in February 1858, for publishing a fraudulent balance sheet and for other malpractices,[1] he directed the jury to acquit one of the defendants, a barrister named Stapleton, declaring that he would leave the Court without a stain upon his character. Stapleton, however, was convicted with the rest, most improperly, as Campbell records in his diary, and was discharged with the fine of one shilling. The Chief Justice found himself assailed by the press for undue leniency, while he was represented at the same time, on motion for a new trial, as having borne unfairly upon the accused.[2] He was still less successful in the case of Simon Bernard, the French refugee who was tried on the capital charge for complicity in Orsini's attempt to assassinate the Emperor of the French. By the admission of one of Bernard's own counsel,[3] there was no defence on the facts, and no case on the law. The Chief Justice summed up strongly for a conviction, but in vain. The adroit appeal of Edwin James to the Anti-Gallic sentiment which a few weeks earlier had thrown out Lord Palmerston's Government proved irresistible, and Bernard was acquitted.

Campbell had earned no common share of enmity during his jostling progress through life, and a strange want of decorum and of the qualities associated with the

[1] *Vide supra*, 113.

[2] *Life of Lord Campbell*, ii. 357, 358, and *Annual Register*, 1858. I can see nothing in the report of the case to justify Sir John Hollams' statement (*Jottings*, 124) that 'Lord Campbell, as usual, took the popular side, which was against the directors.'

[3] The late Lord Brampton, then, of course, Mr. Hawkins, and a stuff gownsman (*Reminiscences*, 104, one-vol. edition). The case was tried at the Central Criminal Court, April 12, 1858. With the Chief Justice were associated Chief Baron Pollock, and Erle and Crowder, JJ.

word *gravitas* gave a perpetual handle to the scorner. Now we find him interrupting the Sunday Assize service at Warwick church by stopping the prayer for the High Court of Parliament. 'There is no Parliament sitting,' he called out to the vicar, as indeed was the case, for it had been prorogued on the Saturday afternoon; but to adapt the language of the Vulgate, '*Judex* in ecclesiâ taceat.' On another circuit town in the Midlands where he was engaged in a dog-biting case, he scandalised the punctilious by having the offending canines, 'Pepper and Mustard,' called on their subpœna and produced in Court.[1] Miss Martineau, to whom Campbell's facetiousness was a perpetual irritant, declared that

> of all the Chief Justices whose lives he, in course of time, wrote, no one probably could surpass him in the amusement he afforded to the Bar, the witnesses, the culprit, and the audience; sometimes at moments when tears would have come, unless driven back by one of the judge's puns.

But carping and ill-natured reflections must not be allowed to obscure Campbell's very great merits as a judge. Setting doggedly to work, bestowing infinite pains on his judgments, leaving no stone unturned, no authority unconsulted,[2] he has bequeathed to the profession a mass of solid law which fills thirteen huge volumes of Adolphus and Ellis, and Ellis and Blackburn. His decisions are still quoted freely in the daily round of legal business, and are given an authority which his literary labours have hitherto failed to command.

Of the numerous criminal trials over which he presided that of Palmer of Rugeley is by far the most famous. And though, in the turf idiom of the prisoner, it was

[1] *Random Recollections of the Midland Circuit.* It is fortunate that the late 'Jack,' constant companion of Sir Henry Hawkins, and most legal of dogs, was not there to scent a rival near the throne.

[2] *E.g.* in May 1858 he privately invited Lord St. Leonards to enlighten him and his puisnes on a nice point of construction which was not covered by the authority of 'Vendors and Purchasers' (*Misrepresentations*, &c., 66).

Cockburn's 'riding that did it,' yet the acumen and firmness of Campbell, together with his tenacious grip of a long chain of confusing and conflicting evidence, contributed largely to the conviction of a hardened and most cunning criminal.

The story of William Palmer, surgeon and 'sportsman,' is too familiar to admit of more than a passing notice.[1] There is no shadow of a doubt that he poisoned his confiding friend, John Parsons Cook; it is almost equally certain that he disposed of his wife in a similar manner; and it is highly probable that he was responsible for more than one other convenient death in the circle of his relatives and acquaintance. But the formidable difficulty existed, and has never been quite cleared away, that though the prosecution attributed Cook's death to strychnine, and though strychnine is a drug which analytical chemists assert to be indestructible if once absorbed in the body, no trace of it was ever discovered in the organs of the deceased.

Palmer was a ruined forger and a bankrupt, but funds were forthcoming in profusion for his defence, a strong Bar was retained on his behalf, including Mr. Grove, Q.C.,[2] then in the height of an enormous patent practice, who was specially retained to deal with the scientific evidence. And the experts for the Crown were confronted by a still larger body of hostile witnesses who, on paper at any rate, were of equal, if not of superior authority. The case, which lasted for twelve days,[3] was

[1] The best narratives are those of Sir J. F. Stephen in the *History of the Criminal Law*, vol. iii., and of Messrs. Lathom-Brown and Stewart in their *Reports of Trials for Murder by Poisoning*, 84.

[2] The inventor of the battery which bears his name and author of that epoch-making book, *The Correlation of Forces*.

[3] From May 14 to May 27, 1856. The trial took place at the Central Criminal Court, the statute 18 Vict., c. 18 (Palmer's Act), having been specially passed to enable the change of venue from Staffordshire, where the prejudice against the prisoner was overwhelming. Baron Alderson and Mr. Justice Cresswell were associated with the Chief Justice. In addition to the Attorney-General (Sir Alexander Cockburn), Edwin James, Q.C., Mr. Bodkin, Mr. Welsby and Mr. John Walter Huddleston (*supra*, 122), appeared for the

heavily loaded with a mass of complicated financial transactions, and, had it been allowed to drift into a wrangle over chemical niceties, a disagreement, if not an acquittal, was within sight. This Campbell was determined to prevent; he was absolutely convinced of the prisoner's guilt,[1] and he

brushed away the merely scientific question; showed that it was not material to discover by what poison the deed had been effected; dwelt with overwhelming force upon the facts, to which, as he explained, the medical evidence was merely subsidiary, and only used for the purpose of demonstrating that the appearances presented were consistent with the means suggested.[2]

Owing to the fortunate interposition of a Sunday, Campbell was able to devote fourteen continuous hours to the preparation of his summing-up, and he took as long to deliver it. Though judicial in the highest sense of the word, it was of the class known as 'deadly,' and Cockburn used to declare that when he caught sight of the set look on the face of the Chief Justice, he knew it

Crown. Serjeant Shee led for the prisoner, and on the same side was Dr. Kenealy, who, as well as Huddleston, owed his brief to the fact of the case coming off the Oxford Circuit, of which they both were members.

[1] *Life of Lord Campbell*, ii. 345.

[2] Serjeant Ballantine, *Reminiscences*, 132. Traces of antimony were found in the body of the victim, and there was conclusive evidence of its administration to Cook by Palmer; it has also been suggested that morphia might have been introduced by the latter into the pills which brought on the final attack. The fatal symptoms, however, are generally accepted as having been those of strychnine poisoning, and Palmer could give no satisfactory account of the disposal of the strychnine which he had purchased on the morning of Cook's death. As to whether the chemical tests employed were imperfect, for strychnine was then a comparatively unfamiliar drug, or whether the clumsy performance of the *post-mortem* helped to destroy the traces, I express no opinion, but Palmer showed the most extraordinary confidence that strychnine would not be discovered, and believed that in its absence his neck was safe. Sir William Grove, I happen to know, was convinced that no strychnine was administered. Powdered glass has been suggested; and there is a tradition, for which I have never discovered any foundation, that Palmer admitted, after conviction, that this was the medium he had employed.

was all over with the prisoner. Serjeant Ballantine narrates an even earlier anticipation of the verdict on the part of the crier of the Central Criminal Court based on the ominous politeness with which Campbell ordered the prisoner to be 'accommodated with a chair.' 'He means to hang him,' muttered that experienced functionary.

His lordship's conduct at the trial was assailed with the utmost ferocity in a pamphlet purporting to be 'a letter to Chief Justice Campbell by the Rev. Thomas Palmer,' brother to the prisoner. Quite apart from the emphatic testimony to the contrary of Fitzjames Stephen, who was present in Court every day, the printed report does not reveal the slightest foundation for the coarse invective in which Baron Alderson as well as his Chief were accused of forcing a conviction on a reluctant jury. The Rev. Thomas Palmer disclaimed all connection with the pamphlet,[1] and its authorship was generally attributed to a certain unnamed barrister. 'I bear him no enmity,' writes Campbell in his diary, 'and he has done me no harm; but for the sake of example he ought to be disbarred.'[2]

Shortly after his elevation to the Bench[3] Lord Campbell was called upon to arbitrate in a dispute which had arisen between the publishers and the London booksellers as to the right of the former to dictate a minimum price at which new books were to be sold. The Chief Justice sat with open doors in the library at Stratheden House with Dean Milman and George Grote as his puisnes. His decision was in favour of the book-

[1] His name is starred as a pseudonym in the British Museum catalogue.

[2] From a close perusal of the pamphlet and from considerable familiarity with Dr. Kenealy's writings in the *Englishman* and elsewhere, I feel little doubt that he was the author. If so, retribution eventually overtook him eighteen years later, when he was disbarred by the Benchers of Gray's Inn for his conduct during the second Tichborne trial.

[3] In May 1852 (*Life of Lord Campbell*, ii. 307).

sellers, and gave general satisfaction. The publishers had undoubtedly pitched their claims too high, and had striven to enforce them somewhat oppressively. But the 'free trade in books' which Lord Campbell believed that he had established was a creature of his imagination. The cut-throat competition and reckless underselling which were the logical outcome of his comfortable doctrine [1] proved inimical to the interests of all concerned in the production and retailing of books, not least to those of the author, and a system similar in principle to that which he condemned has long since been arrived at by mutual arrangement between the publishing and the bookselling trades.

Campbell did not allow his judicial duties or literary relaxations to interfere with his activity as a legislator, and his position as chief magistrate gave additional weight to his proposals. From his first entry into public life he had thrown himself with a zeal that was well tempered by knowledge into the reform both of the substance and the practice of English law; and, though he was not a little prone to adopt with small acknowledgment the labours and the projects of other men, there are few who have left behind them a larger or a more creditable mark on the Statute-book. It would be tedious to attempt any detailed enumeration of the work which he accomplished in this direction, but there are three very important measures, each of which, when

[1] 'Let there be entire freedom in the transactions between the publishers and the retail booksellers, the publishers asking prices and making or refusing allowances as they please. Let them deal with everyone (although unticketed) who brings money in his purse, or whose responsibility is undoubted, taking care not to encourage the long and renewed credits which are said under the existing system to have produced so much mischief. The publishers are not bound to trust anyone whom they believe to be sacrificing his wares by reckless underselling, or to be carrying on business without a profit sufficient for maintaining solvency. But let them not require any pledge from the retail dealer to whom they sell their books as to the price which he shall demand in re-selling them.' A pamphlet containing his judgment has recently been reprinted by the *Times*, and was freely quoted in the so-called 'Book War' (see the *Times* of May 20, 1906).

occasion arises, is still cited as 'Lord Campbell's Act.'

Only one of these, the Obscene Publications Act, carried after a stiff breeze with Lord Lyndhurst,[1] belongs to his term of office as Chief Justice; the others were introduced during his period of probation as 'a pensionless Peer' on the Opposition benches. The Libel Act of 1843,[2] in the drafting of which he was assisted by Mr. Starkie, writer of the well-known text-book, allowed the defendant in a criminal prosecution to plead the truth of his imputations, subject to the proviso that their publication was free from malice and for the benefit of the community. In civil proceedings it authorised, as a plea in mitigation of damages, the offer of a public apology, and it exonerated publishers from the unlawful acts of their servants if unauthorised by them. By 9 & 10 Victoria, c. 93, he succeeded in driving a hole through the venerable maxim *actio personalis cum persona moritur*, and gave the legal representative of the deceased victim of a tort the power to recover damages.

Something has been already written of the trials and vexations to which Campbell was subjected in the House of Lords at the hands of some of his brother senators. His personality seemed to rouse all the spirit of mischief in Lyndhurst, and on Brougham he acted like a red handkerchief to a bull. The 'scenes' in which Brougham and Campbell were the chief actors formed a perpetual amusement both to the Peers and to the readers of the debates:

The sparring of the two Law Lords was the severest ever known to pass between persons who persisted in calling one another friend. The noble and learned 'friends' said the most astonishing things of and to each other without ever coming to blows. There was no danger of that, for Lord

[1] 20 & 21 Vict. c. 83; *vide* vol. i. 164.

[2] 6 & 7 Vict. c. 96. For a somewhat sanguine estimate of the benefits anticipated from this Act by its noble author, see *Life of Lord Campbell*, ii. 179.

Campbell could bear anything, and did not care enough to lose his temper seriously.[1]

Fortunately for himself his sublime self-satisfaction carried Campbell unscathed through the ordeal. His posthumous volume of 'Lives' and his own autobiography are full of 'settings down,' which he administered to Brougham and St. Leonards, and of faithful dealings with Truro and Cranworth when they required friendly correction.[2] There was a maladroitness about him of which his writings show him to have been happily unconscious. Of all the Law Lords who assailed the life peerages he was the only one who gave personal offence to the individual whom the Government had rashly selected as the *corpus vile* for their experiment. Relations were so strained that finally Cranworth gave a reconciliation dinner to the now ennobled Parke and his opponent, whom Lord Lyndhurst irreverently styled 'a couple of damned fools, eh.' The evening did not begin well, for, according to Lord Granville, who was present,[3]

Wensleydale said to Jock, upon shaking hands with him, 'All is forgotten.' Jock replied, 'There is nothing to forget.' Wensleydale turned round on his heel, saying, 'I have plenty to forget.' They were (injudiciously) placed next to one another at dinner, and never spoke till *soufflé* time, when they relaxed and began to converse.

With that great lord of irony who was destined to succeed him as custodian of the Great Seal he never came into actual personal collision, for Bethell and Campbell never sat together in the same Chamber, but they had contracted a strong mutual dislike from the hour of Bethell's appointment as Law Officer.[4] The latter was

[1] Miss Martineau, *Biographical Sketches*, 252.

[2] E.g. *Life of Lord Campbell*, ii. 340. 'I followed the Chancellor (Cranworth), and was under the painful necessity of cutting him up cruelly.'

[3] *Life of Lord Granville*, i. 220.

[4] Nash, *Life of Lord Westbury*, i. 149, 255; *Life of Lord Campbell*, ii. 357.

one of the severest critics of the judicial methods of the House of Lords during the period when Brougham and St. Leonards wrangled over the prostrate form of Cranworth, and he complained in the House of Commons that a Court 'the decisions of which ought to be unalterable as the laws of the Medes and Persians, was inferior to the lowest tribunal in what ought to be the accompaniments of a Court of Justice.' Campbell retorted from 'another place' that apparently the Solicitor-General was of opinion that justice would never be satisfactorily administered in their lordships' House until he himself presided on the Woolsack.[1]

Another and more virulent dispute broke out over a certain definition of the law relating to aliens which had been erroneously attributed to Bethell. Campbell was shortly about to preside at the trial of one of those individuals, the above-mentioned Simon Bernard, and, 'drawn' by Lyndhurst, he rose in his place in Parliament to declare his astonishment and distress at such a misapprehension on the part of one who held the office of Attorney-General. In the Commons Bethell complained bitterly that his argument had been garbled, and retorted with what Campbell calls a scurrilous attack,[2] the sting of which undoubtedly lay in the lament that the judges of the land should be so 'incontinent of tongue.'[3] On the other hand, Bethell's biographer assures us that the sustained gravity and carefully chosen invective with which Sir Richard denounced his assailant afforded great amusement to the House. The verdict, I think, will be that in want of decorum there was little to choose between the disputants.

But a sudden and curious conjuncture was to bring the Chief Justice and the Attorney-General within the same fold. In June 1859 Palmerston undertook the formation of his last Ministry, and not least among his difficulties was the Chancellorship. Cranworth, for

[1] Hansard, cxxxix. 2120. [2] *Life of Lord Campbell*, ii. 257.
[3] Hansard, cxlviii. 1848; cxlix. 8.

reasons already stated,[1] was ruled out at once, and to Bethell there were equally strong objections, though of a very different character. Sir John Romilly, Master of the Rolls, Vice-Chancellor Page Wood, Sir Alexander Cockburn, then Chief Justice of the Common Pleas, all had their supporters, when a luminous suggestion of Lord Lyndhurst's, in the language of Miss Trotwood, 'set them all right.' Applied to by Lord Palmerston through the medium of a member of the Cabinet, the 'old man eloquent,' whose powers of judgment were unimpaired by his fourscore years and seven, recommended that the seals should be given to Campbell.

Campbell, he said,[2] had always belonged to the Liberal party; he had claims upon the office by seniority which made it impossible that either Bethell or Romilly should object to his appointment; he was a sound lawyer, and would do no discredit to the Woolsack.

But Bethell did object, and very strongly. There was an awkward hitch, and Palmerston was placed for the moment in a position of serious embarrassment; but, after 'an explosion at Cambridge House'[3] on the part of the indignant Attorney-General, he agreed to submit to four of the Law Lords, who then happened to be sitting together, the question whether, if he acquiesced in the proposed appointment, the rights of the Equity Bar would suffer.[4] Lords Cranworth, Brougham, Wensleydale, and Kingsdown with one accord assured Bethell that he could not, with propriety, refuse to serve under Lord Campbell. The Attorney-General lost no time in

[1] *Supra*, 75. [2] Martin's *Life of Lord Lyndhurst*, 480.

[3] Then the residence of the Palmerstons, now the Naval and Military Club.

'Past the wall which screens the mansion, hallowed by a mighty shade,
Where the cards were cut and shuffled and the game of State was played,
Now in those world-noted chambers subalterns exchange cheroots,
And with not ill-natured banter criticise each other's boots'
(*The Ladies in Parliament*, by Sir George Trevelyan).

[4] *Life of Lord Westbury*, i. 275; *Life of Lord Campbell*, ii. 369.

entering into a full and frank explanation of his conduct with the Lord Chancellor designate; they agreed to forget their differences, and during the remainder of Campbell's life their relations were pleasant and amicable. It is amusing, in comparing their respective biographies, to find how each regretted the dilatoriness of the other in taking up urgent questions of law reform.[1]

There can be no doubt that Campbell was genuinely astonished at his good fortune, probably for the first and only time in his career when preferment was in the wind. When Palmerston sent for him to make the offer he had only anticipated that the Prime Minister wished to consult him about the new Solicitor-General.[2] To undertake at a moment's notice the administration of a new branch of the law, with which, in spite of his Irish trip in 1841, he had very small practical acquaintance, was a startling proposition to make to a man of eighty. But with a just reliance on his own great powers he accepted without hesitation. Subsequent inspection of the 'Lives of the Chancellors' informed him that since St. Swithin the Great Seal had never been delivered to anyone, ecclesiastical or lay, who had attained his time of life.[3]

He was Chancellor for just under two years, a longer period than was reached either by Lord Truro or Lord St. Leonards. Though he was eulogistically declared by the latter to have maintained in Lincoln's Inn the great reputation which he had acquired as a common law judge,[4]

[1] Mr. Nash has a good story of a meeting between the rivals in Westminster Hall when the first rumours were current. 'The day being cold for the time of year, Lord Campbell had come down to the House of Lords in a fur coat, and Bethell, observing this, pretended not to recognise him. Thereupon Campbell came up to him and said: "Mr. Attorney, don't you know me?" "I beg your pardon, my Lord," was the reply, "I mistook you for the Great Seal."'

[2] *Life of Lord Campbell*, ii. 368.

[3] *Ibid.* ii. 377. Serjeant Maynard (*vide supra*, 136), he admits, was made Lord Commissioner at eighty-eight, but he never had sole custody of the Seal.

[4] Hansard, clxiii. 1478.

he left little mark in the Court of Chancery. At first he sat with the Lords Justices, Knight Bruce and Turner, both of them highly experienced equity lawyers, and he compared himself to a wild elephant being broken in between two tame ones.[1] But, before Michaelmas term was over he considered himself out of leading strings, and boldly took his turn in sitting alone to hear appeals from the Master of the Rolls and the Vice-Chancellors.

The harmony of his relations with the Equity Bench was temporarily broken by the rebuke which he thought fit to pronounce in open Court upon the prolixity of Sir William Page Wood, expressing the hope that, in the future, the learned Vice-Chancellor would adopt the practice of delivering written judgments. The subject of the lecture preserved a dignified silence,[2] but the Master of the Rolls and Vice-Chancellors Kindersley and Stuart entered a strong remonstrance against this most undesirable precedent, the adoption of which must infallibly put a stop to cordiality between the judges themselves, and diminish the respect paid to them by the people. In reply Campbell begged pardon, with mock humility, 'if anything which fell from me on the occasion you refer to was at all inconsistent with the respect or courtesy due from one judge to another.' But he insisted that if Lord Eldon could complain of Sir John Leach's judgments for being too short, he might surely complain of Sir William Page Wood's for being too long. Circumstances affect analogies, and Lord Campbell had scarcely been long enough in the saddle to ride the high horse. In justice to him it should be said that while the incident was at its height he received a letter from Bethell congratulating him on the benefit he had done to the habits of the judges.[3]

In another branch of his judicial duties, the appellate jurisdiction of the House of Lords, he is entitled to

[1] *Life of Lord Campbell*, ii. 384.
[2] *Life of Lord Hatherley*, i. 91, and *infra*, 359.
[3] *Life of Lord Campbell*, ii. 388.

unstinted praise. After his death Lord St. Leonards, no partial critic, declared that his despatch of business was unprecedented, 'not that which Lord Bacon calls "affected despatch," but real, substantial, and useful despatch.'[1] Never had there been so few arrears in the cause list, and nowhere did Campbell display more strongly his native acuteness and his determined attention to every branch and detail of the matter in hand. The *personnel* of the supreme tribunal had been materially strengthened since the failure of the Life Peer experiment, but Campbell supplied a confidence and a driving power which were lacking in his immediate predecessors.

Many years after Campbell had been laid in the grave Gladstone told Lord Coleridge that of the six Chancellors with whom he had sat in the Cabinet 'far the most "useless" (it was his own word) was Westbury, and (what surprised me) Campbell the next.'[2] This opinion, however, does not appear to have been shared by Lord Granville, who writes to Lord Canning that 'Jock Campbell is first-rate in court and useful in the Cabinet, enchanted but as meek as possible.' In another passage he relates how, when the fiery counsels of Palmerston and Lord Russell on behalf of an armed intervention in North Italy had been overruled, 'the relief on some of the countenances, particularly that of Jock Campbell, was amusing.' Somehow or other there was an element of comedy in the sayings and doings of the Lord Chancellor which nothing could ever entirely suppress. Lord Granville further records a shrewd saying of his during this the sere and yellow leaf of his jocular existence. He had very appropriately congratulated Lord Shaftesbury on the school from which Palmerston's bishops were appointed. The philanthropist 'received the congratulations with triumph, and boasted that all the dissenters would soon join the Church of

[1] Hansard, clxiii. 1478.

[2] He 'was speaking apart from law, on which he said Campbell always appeared to him a master' (*Life of Lord Coleridge*, ii. 218).

England. "Yes," said Jock, "and all the Church of England men leave it." '[1]

One of the most picturesque scenes in his long life was enacted in the Court of Chancery at the Old Hall of Lincoln's Inn, when, early in January 1860, the Lord Chancellor followed the precedent of Eldon by administering the oath of allegiance to the revived Inns of Court Volunteers. It was not far short of sixty years since he himself had carried a firelock in the old Bloomsbury Association, and it may well have been that he was the sole survivor of that vigorous and patriotic company.

The disposal of the first piece of important patronage which fell to his share involved him in temporary disgrace with the leaders of the Bar and with the press. His appointment of Mr. Blackburn to a vacant judgeship in the Common Pleas gave great offence to the Queen's Counsel and to the profession generally, for Blackburn, though a learned and profound lawyer, who lived to fill with universal applause a seat in the highest tribunal of the land, was a stuff-gownsman with little or no practice, and known to fame only as a Queen's Bench reporter. Campbell winced under the passing storm of unpopularity, but consoled himself with the maxim *detur digniori*, and with the certainty that time would vindicate him.[2]

He found a more immediate champion, however, in Lord Lyndhurst, whose own exceptional discrimination in the making of judicial appointments gave him an especial right to intervene. This was the occasion of his celebrated and most felicitous quotation[3] over the attainment by the aged Chancellor of everything that he had ever looked forward to. 'We may say of him, in the words of the poet,

> Thou hast it now, King, Cawdor, Glamis, all,
> As the weird women promised.'

[1] *Life of Lord Granville*, i. 222, 346, 369.
[2] *Life of Lord Campbell*, ii. 372. [3] *Ante*, vol. i. 166.

The object of the compliment was happily undisturbed by the unquoted words that follow in the text—

> 'and I fear
> Thou playd'st most foully for it.'

But the close alike of ambitions and fulfilments could not be long delayed. On March 25, 1860, Lady Campbell and Stratheden died. 'I never expect an hour of real happiness in this world,' wrote the bereaved husband a month later,[1] 'notwithstanding all the devoted and never-ceasing solicitude to comfort me of all my children.'

Few men had a home life of such unbroken felicity to look back upon as Lord Campbell, and this was the first breach in the happy circle. His letters and diaries are full of the sayings and doings of his sons and daughters, their beauty, their precocious ways, their affection, the ponies they rode, and the salmon they caught. The parental fondness was amply returned, and not a cloud obscures the pages.

About the year 1846 Lord Campbell had purchased an estate, Hartrigge in Roxburghshire, situated in beautiful country near the junction of the Teviot and the Jed. The Eildon Hills were visible from the grounds, and from the window of the mansion could be seen the ruins of Jedburgh Abbey. 'Jedburgh justice' had been conducted in old days on the principle of 'Hang all or save all,' and the parallel of 'Cupar Justice,' execution first, trial afterwards, had been familiar to Campbell from his boyhood in the Fifeshire town. He expended large sums on the rebuilding of the house at Hartrigge, and on the reformation of the 'policies.' Here his Long Vacations were spent, and whatever other time he could spare, and here he would entertain the southern friends who ventured across the Debatable Land.

There is little more to tell. On June 12, 1861, he made his last entry in his Journal. It records his delivery

[1] *Life of Lord Campbell*, ii. 393.

of judgment in the case of the Emperor of Austria *v.* Kossuth,[1] and also a critical division in the House of Commons in which the Government was only saved by the abstention of a handful of Tory malcontents.

I should not at all mind, he wrote, being honourably released from the labours and anxieties of the Great Seal. *Pergustavi imperium*, and I should be satisfied to have repose during the remaining short space of my earthly career.[2]

On Saturday the 22nd he sat in Court, attended a meeting of the Cabinet, and entertained a large party at dinner. The servant who went to call him next morning found him dead in his armchair. 'As his life had been gay and fortunate, his death was quiet and easy.'[3] Only the night before he had said to his old friend and pupil, the Solicitor-General, Sir David Dundas, that there might very properly be added a petition to the Litany against a lingering illness.[4]

The Monday following, on the motion of Lord Granville, who had himself been a guest at the dinner, the House of Lords adjourned immediately after their meeting. The proposal was without precedent, but no Chancellor had died in harness since the melancholy and mysterious end of Charles Yorke.[5] He was buried in the cemetery of Jedburgh Abbey by the side of his wife. Many hard things have been said and written about 'Jock Campbell,' but it is impossible for the student of his letters and his diaries to part from him without a feeling of something very like affection.

[1] *Vide infra*, 393 *n.*

[2] *Life of Lord Campbell*, ii. 408.

[3] Miss Martineau, *Biographical Sketches*, 253.

[4] *Life of Lord Campbell*, ii. 410. Lord Granville (Hansard, clxiii. 1477) gives the words as 'a prayer in the Litany against an extremely prolonged existence.'

[5] January 30, 1770, three days after his acceptance of the Great Seal (see *Lives of the Chancellors*, vii. 99).

CHAPTER X

LIFE OF LORD WESTBURY DOWN TO HIS APPOINTMENT AS ATTORNEY-GENERAL

1800–1856

RICHARD BETHELL was born on June 30, 1800, at Bradford-on-Avon, where his father was a medical practitioner; his mother was Miss Jane Baverstock. The Bethells claimed descent from the ap-Ithels of Wales, and a connection with the Slingsbys of Yorkshire; but the more immediate progenitors of the future Chancellor had drifted into Wiltshire from Hereford and the Welsh marches in the beginning of the previous century.

His early days were clouded with illness, and a series of financial reverses which befell the household when he was a boy of six or seven gave him premature initiation into the struggles and bitter realities of life. There was little money to spare on education, but Dr. Bethell, who had early detected the extraordinary promise of his son, gave him the best that was in his power. He received a sound classical grounding at a private school in Bristol; and on attaining the age of thirteen he spent a year at home under the tuition of his father, a man possessed of very considerable attainments. Without some assistance a University career was out of the question; but there was the chance of a scholarship at Wadham, a college having close associations with the West of England, and in October 1814 Dr. Bethell took his son up to Oxford for matriculation. The would-be undergraduate was only a month or two over fourteen, and was arrayed in round jacket and frilled collar. The warden, Dr. Tournay,

objected that children were not admitted, and it was only after some conversation at his own hospitable board with the precocious youth that he withdrew the veto, remarking: 'The first thing we must do is to get you a tail coat.'

A day or two later Richard Bethell matriculated as a commoner of Wadham; he was too young to take the oath of obedience, but he was allowed to subscribe the Thirty-nine Articles.[1] In the following year he won his scholarship, to which was added the Hody exhibition for proficiency in Greek. Keble was about the same age when he became scholar of Corpus, and so was Phillpotts, the famous 'Henry of Exeter.' Otherwise Bethell's accomplishment is, I believe, unique among men who have achieved distinction in after life. His total emoluments from the college seem to have amounted to about 70*l.* per annum;[2] in his fourth year, while still an undergraduate, he began to take private pupils, and he once told Mr. Kinglake that after the age of seventeen he had never cost his father a penny;[3] indeed, he was able, though at the cost of no small self-denial, to assist his parents in a struggle which grew harder year by year. A life thus ordered meant intense application as well as economy and frugality. It was then that he acquired the habit of early rising which never forsook him, and the importance of which he never ceased to press upon young men at the Bar. There was little leisure for recreation or society, but Wadham was a college that kept mostly to itself, and at the scholars' table young Bethell is said to have been popular and respected. A pull on the river, a swim in the Cherwell, or a swinging constitutional up Shotover kept him in health. In April 1818 he was placed in the first class in classics, and the second in mathematics, though 'below the line' in the latter school,

[1] Hansard, clxxii. 163.

[2] Nash, *Life of Lord Westbury*, i. 16 *n.*

[3] Kinglake, *Invasion of the Crimea*, ii. 474. Delane, the famous editor of the *Times*, capped this by stating that he had lived in comfort at Magdalen Hall, and kept a horse, out of the proceeds of his pen, without any assistance from home.

which was practically equivalent to a third.[1] The undergraduates carried the boy-scholar shoulder-high round the quadrangle. On May 22 he took his B.A. degree, a few weeks before his eighteenth birthday. For the next four years, in the course of which he won the Vinerian Law Scholarship, he stayed up at Oxford taking pupils, and in 1822 he was elected to a Fellowship at his own college.

Bethell cherished no very high respect for the narrow Oxford curriculum of his day, with its total neglect of modern languages, modern history, political economy, and the physical sciences. But he always retained a warm regard for the college that had treated him so kindly, and many a young man of promise, whose parents had no particular predilections, found himself wafted within the walls of Wadham by the influence of her most distinguished son. After his death, in accordance with his written wishes,[2] a tablet was placed in the ante-chapel, recording the principal events of Lord Westbury's life, and adding that he dated all his prosperity from the event of his having become a scholar of the college:

Fortunarum vero suarum principium ab eo die repetebat quo annum ætatis xv^{um} conficiens scholaris Collegii Wadhami renunciatus est.

Nor, in spite of all his protestations against the ancient system, could he ever conquer or disguise a feeling of contempt for those who had missed a classical training. 'I owe all my success in life,' he once told a Balliol breakfast party with characteristic hyperbole, 'to Aristotle's Rhetoric.' A bishop who could cap Horace and Æschylus with him, as they sat waiting for the Lords to make a House, found the old Erastian a delightful companion, while the Queen's Counsel, whose sense of quantity was deficient, and who failed to appreciate a classical allusion, had more than usual cause for complaining of his bitter tongue.

[1] There were then and until 1825 only two classes.

[2] *Life of Lord Westbury*, ii. 282.

His fellowship enabled Bethell to depart for London and begin his law studies in earnest. His earliest ambition, carefully fostered at home, had been for the Bar, and while still in residence at Oxford he had entered at the Middle Temple, by which society he was called on November 28, 1823. His first, and apparently his only experience as a pupil was in the chambers of Mr. William Lee, an equity draftsman of the old school, into the mysteries of which science Bethell was speedily indoctrinated. To his mind, acute, subtle, and logical, the intricacies of real property law and the niceties of conveyancing presented no difficulties. He brought to his profession his old habits of industry and of concentration, together with that superb self-confidence which was the source alike of his strength and weakness. As soon as he was called he established himself in modest basement chambers at 9 New Square, Lincoln's Inn.[1]

There Lord Eldon still reigned supreme, Sir Thomas Plumer was Master of the Rolls, Sir John Leach, Vice-Chancellor of England, an equitable Cerberus. A reference to Vesey or to Simon will show how very small and select was the Equity Bar, and with what wearisome reiteration the names of the fortunate counsellors repeat themselves.

Into this narrow circle (to quote from Mr. Nash)[2] Richard Bethell made his way with a calm assurance which startled those who had breathed its atmosphere for years. Their astonishment grew apace when in a short time they found the new-comer elaborating principles and assuming a knowledge of points of practice after a fashion to which none but the more venerable practitioners had hitherto aspired. He did not appear to desire any social intercourse with his pro-

[1] It was in that same basement that the writer first 'put up his name'; whether his chambers were those actually occupied by Mr. Bethell, he was never able to ascertain, but to his fancy the shade of Lord Westbury would ever and anon frown a rebuke at the waste of time which ought to have been spent in carrying out his favourite maxim 'absorb the Pandects.'

[2] *Life of Lord Westbury*, i. 40.

fessional brethren, or to consider whether they were willing to bear his rather spinous humour.

Nor were his rivals prepossessed in his favour by the mincing manner and refinement of intonation which clung to him to his dying day. The stately and elaborate form of speech in which his most trivial sentences were clothed produced the impression of affectation; he seemed incapable, even in moments of surprise or anger, of uttering a broken phrase. Whether these peculiarities were natural, or whether they were an unconscious reproduction of the classical diction in which he was steeped, I have no means of judging. They procured for him the nickname of 'Miss Fanny,' and they lent an especial quality to those bitter sayings which rendered him more dreaded than any man of his generation.

He owed his first start at the Bar to Mr. Charles Harrison, of Bedford Row, the founder of a firm of solicitors which still stands high in reputation, and the uncle of Mr. Frederic Harrison, sage, philosopher, and historian, to whom I am indebted for some interesting information on the subject of this memoir. In his first year Mr. Bethell made a hundred guineas, a sum which soon bade fair to advance in arithmetical progression. Three years after his call he burnt his boats so far as Oxford was concerned by entering into the bonds of holy matrimony, and thereby forfeiting his fellowship. His wife was the daughter of Mr. Abraham, an architect of some celebrity.[1] Pupils already added to his income, and shortly after his marriage he took a house in Southampton Row, the proximity of which to Lincoln's Inn allowed it to serve both as a family residence and as professional chambers.

The story of his first great stride to the front has often been told. Brasenose College had found itself

[1] One of his sons adopted the same profession, and was responsible for the Middle Temple Library, which rejoiced for the time in the sobriquet of 'Little Bethell,' a pleasantry which we shall meet in many other versions.

involved, through an information filed in Chancery on the relation of a wealthy and influential nobleman, in a suit which threatened a severe reduction of its revenues. While the Principal and Fellows were anxiously making themselves ready for battle, Dr. Gilbert, the head of that learned society, bethought him of Mr. Bethell. He had been so strongly impressed by the fluency and grace with which the young scholar of Wadham had translated a strophe of Pindar in the *viva voce* examination for his degree [1] that he insisted upon retaining him in spite of his short standing at the Bar and his comparative inexperience. By Bethell's advice, in the teeth of that given by several eminent counsel, the college refused to compromise, and when the suit came on before the formidable Sir John Leach the arguments of Bethell and Pemberton were found irresistible. I do not know if it was on this occasion that Sir John Leach, now Master of the Rolls, made his famous remark: 'Mr. Beethell, you understand the matter, as you understand everything else,' but the college were again successful on the appeal by Lord Suffield to the House of Lords, and signified their satisfaction with the Principal's choice by presenting 'Mr. Beethell' with a piece of plate suitably inscribed.[2]

The years that follow are one unbroken chronicle of success, but they were years of enormous and absorbing labour. All his waking hours in term time were given to his profession; he had no leisure for society, little enough for the enjoyment of family life, his dinner was snatched at his chambers, and is said to have never varied in quantity or quality—a mutton chop, one slice of stale bread, and a glass of water from Lincoln's Inn pump. The political upheaval of 1834–35 made a clean sweep of

[1] Perhaps the highest compliment ever paid to Bethell in this phase of his character is the remark which Mr. Nash (*Life of Lord Westbury*, i. 82) quotes from Mr. B. B. Rogers, the accomplished translator and editor of Aristophanes. 'He was the finest classical scholar I ever knew.'

[2] Attorney-General *v.* Brasenose College, 1 *L.J.* (N.S.), 66; 2 Clark and Finnelly, 295 (*Life of Lord Westbury*, i. 53).

the leaders of the Equity Bar; Sugden, Pepys, Bickersteth were all translated to higher spheres, and Bethell, after little more than ten years' practice, found himself dividing the lion's share of the business with Knight (afterwards Sir James Knight Bruce) and Pemberton Leigh. The fact that he was still technically a 'junior' allowed him to reap the golden harvest which followed the Municipal Corporations Act.[1] The preparation of schemes for the management of charitable property, and the settling of information and petitions gave the equity draftsmen as much work as they could accomplish, and Bethell's habitual nicety and preciseness of expression gave him especial aptitude for this class of business.

In Hilary Term 1840 he applied successfully to Lord Cottenham for a silk gown, and the rest of his time as a private member of the Bar was devoted almost exclusively to advocacy, the gift of which, as exercised before an educated tribunal, he possessed in a degree which has never been surpassed, if, indeed, it has ever been equalled. Imperturbability, pertinacity, readiness of retort, and self-possession are qualities which he shared with some of his contemporaries. But where he stood supreme was in the power of concise and lucid exposition, of marshalling his facts and his comments and his law in an order which was so logical that it seemed not merely appropriate but inevitable. Under his hand doubt vanished, the obscure became plain, the most tangled and intricate propositions were resolved into perfect simplicity. The listener was half persuaded, half impelled along the path to which Bethell desired to urge him. 'To make the worse appear the better reason' is a line that is perpetually quoted, and often inaccurately, when the ethics of advocacy are under discussion, and the lawyer rightly takes cover behind the maxim that he is entitled to use every legitimate argument on behalf of his client. The crux comes over the word 'legitimate,' and it is certain that in Bethell's mouth a sophism or

[1] *Ante*, vol. i. 402.

fallacy, which he would have torn to rags had it been used against him, was wont to assume the appearance of a self-evident truth. The story is told how, on one occasion, through inadvertence or mistake, Bethell had drawn a bill against a client for whom he held a standing retainer. At the hearing of the suit his services were claimed by the defendant, and it was Bethell's painful duty to demolish his own handiwork. 'Your Honour,' he said, 'of all the cobwebs that were ever spun in a Court of justice this is the flimsiest: it will dissolve at a touch.' And it did. By way of reparation and consolation, he whispered, as he went out of Court, in the ear of the solicitor who had first instructed him, 'The bill is as good a bill as was ever filed.'

For an exhaustive and brilliant appreciation of Bethell as an advocate and orator I would refer the reader to the pages of Mr. Nash,[1] from which I venture to 'convey' the closing sentence:

> His voice was clear and musical, and as he warmed to his argument it gained in volume, and there was a touch of sympathy which, coupled with the quaint wit of his illustrations, gave intellectual entertainment to his audience. For hours he would maintain an unbroken fluency without once changing an expression or losing the balance of his sentences. Every address was an oration, gradually unfolded, enlarged and completed.

These arts and graces were rendered all the more formidable by a sarcasm and an irony which he exercised without pity or remorse, and the sting of which he scarcely appreciated. If they were true, he could not see why the subject of his observations should resent them, and there were few with whom he was brought in contact who came away unscathed. The epigrams which seemed to come by instinct, his ingenuity in touching the raw spot, the exquisite appropriateness of the gibe to the victim, were allied with an unconcealed contempt for

[1] *Life of Lord Westbury*, i. 71 *et seq.*

the world at large which rendered him superior to any attempt at repartee or interruption. The calculated insolence, the lisp, the studied syllabic articulation with which the punishment was meted out, produced an effect analogous to that slow dropping of water on the tortured skull which was one of the refinements of mediæval atrocity.

No one was immune, not the Court itself, nor the solicitors who instructed him, least of all his juniors. One of these, Charles Neate, Fellow of Oriel and in after years member for the City of Oxford, was goaded beyond endurance,[1] and retaliated in a fashion which all but cost him his gown, and did compel his disappearance from active work at the Bar. Whether he knocked Bethell down, as the Oriel tradition runs, or pulled his nose outside the Vice-Chancellor's Court, or, in a still more modified version, merely lunged at him with an umbrella, I am not prepared to decide. It is a little difficult in the face of this well-authenticated story to accept Mr. Nash's statement[2] that Bethell's 'pedantic assertion of superiority and the scathing wit with which he assailed anyone who thwarted his purposes or wounded his *amour propre*' were lavished only on men of his own standing. But we may gladly accept the author's corollary that 'those who were ready to make some allowances for the peculiarities of his manner found that there lay behind an apparent hauteur and supercilious reserve a natural kindness of disposition' for which the world gave him no credit.

He had worn his silk gown for little more than a twelvemonth when the appointment of Knight Bruce and Wigram to the Vice-Chancellorships created under the Act of 1841 still further reduced the number of his rivals, and in 1844 Pemberton Leigh, enriched by an

[1] 'Shut up, you fool,' are the words which are said by the late Thomas Mozley to have been addressed to him (*Reminiscences of Oxford*, ii. 104).

[2] *Life of Lord Westbury*, i. 79.

unexpected fortune, elected to retire from the profession in the very plenitude of his splendid powers. It is said that for many years Bethell's annual income from fees alone exceeded 20,000*l.*, a convenient round sum which is somewhat in excess of that assigned nowadays to the reigning toasts of the Equity Bar.[1]

While retained in nearly every appeal of importance which came before the Lord Chancellor or the House of Lords, he had attached himself permanently to the Court of Sir Lancelot Shadwell, the last 'Vice-Chancellor of England.' Over this amiable judge and sound lawyer, the necessity of whose nature it was, according to Lord Selborne,[2] to be governed by somebody or other, he established an absolute mastery. And in the exercise of that power he not infrequently abandoned even the semblance of deference. 'The tyranny which successive leaders exercised over Shadwell,' continues the same authority, 'would be inconceivable to those who did not witness it.' And Bethell was more audacious and less ceremonious than either Sugden or Knight Bruce, to whose sway he had succeeded. The fact that 'at home,' in the schoolboy sense, he was on terms of the warmest personal friendship with the Vice-Chancellor did not in any way mitigate the rigours of his tongue. Rival leaders used angrily to declare that argument became a mere figure of speech before such a tribunal; and Shadwell was facetiously likened to King Jeroboam, because he had set up an idol in Bethel.[3]

[1] Mr. Nash (*Life of Lord Westbury*, ii. 7) puts it at nearer 30,000*l.* than 20,000*l.* in the years immediately preceding Bethell's elevation to the Woolsack.

[2] *Memorials, Family and Personal*, i. 374.

[3] Nash, i. 85, 95. This somewhat obvious pleasantry was adapted to suit many occasions. At a later date there was a certain Nonconformist counsel on the Midland Circuit, who was on terms of friendship with Sir Richard at a time when his prospects of rising to the Woolsack were somewhat overclouded. 'I suppose those young fellows are going to Church,' he remarked on Sunday morning, as two or three of the juniors went by in high hats carrying their prayer-books. 'Yes,' was the rejoinder, 'while you stick to Bethel.'

In August 1850 Shadwell died also, having been stricken with fatal illness while executing for the second time the office of Commissioner of the Great Seal. Whether Bethell was invited to fill the post is not certain. Mr. Nash says that he refused an equity judgeship about this time,[1] but the resignation of Vice-Chancellor Wigram in the same year and the appointment of Turner and Knight Bruce to be Lords Justices of Appeal created several other vacancies. The offer, however, was certainly made, and the story was current in Lincoln's Inn that Bethell treated it in much the same way as Brougham received the offer of the Attorney-Generalship from Lord Grey.[2]

What do they take me for? he is reported to have said as he tore up the Chancellor's note. Is it likely that I am going to give up 20,000*l.* a year to be scrambled for among those d—d fools?

In April 1851 he entered the House of Commons for the first time; he had reached a point in his profession where to remain stationary was to go back, and for the highest honours a seat in Parliament was indispensable. His political views were agreeably lax; he had a profound contempt for the babble of debate, and to a mind at once so arrogant and so fastidious the conventions of party government and the shifts to which its votaries were reduced were in the last degree repugnant. He had scant sympathy with either the measures or the leaders of Liberalism during the Melbourne epoch. He was a Peelite, so far as he was anything; he had joined the Conservative Club, and in 1847 he contested Shaftesbury as a 'Liberal Conservative,' a convenient formula by which sitters on the fence were prone to designate themselves until the flood of 1880 washed the Laodiceans away. He was defeated, however, by Mr. R. B. Sheridan, and bided his time, in spite of more than one invitation, until the occurrence of a

[1] *Life of Lord Westbury*, i. 97, 107. [2] *Ante*, vol. i. 290.

chance vacancy at Aylesbury in the spring of 1851, when he was returned after a sharp contest with Mr. Bousfield Ferrand, a now forgotten political celebrity. Though still calling himself a Liberal Conservative he had come down at the request of the Liberal Whip, and there was henceforward no delusion as to his party allegiance. After a brisk debate, in which he faced single-handed an excited special meeting of the Conservative Club, his name was removed from the books, and his election to Brooks's a few days later set the seal upon his Whiggism.

The Liberal prospects at this juncture were anything but brilliant. Lord John Russell was sinking deeper and deeper in the slough, and only retained office through the prostration and dissensions of his opponents. He had just involved himself in a fresh tangle over the Ecclesiastical Titles Bill which seemed to render all prospect of a coalition with the Peelites more remote than ever. The measure was withdrawn, re-shaped, and finally owed such of its stringency as survived to the exertions of Sir Frederick Thesiger.[1] Bethell's maiden speech was

[1] *Vide supra*, 109; the situation is well summed up by the authors of *The Bon Gaultier Ballads*:

'There's no mistake,' the Friar said,
'I'll call myself just what I please.
'My doctrine is that chalk is chalk
'And cheese is nothing else but cheese.'

'So be it then,' quoth Little John;
'But surely you will not object
'If I and all my merry men
'Should treat you with reserved respect.

'They can't call you Prior of Copmanhurst,
'Nor Bishop of London town,
'Nor on the grass as you chance to pass
'Can we very well kneel down.

'But you'll send the Pope my compliments,
'And say as a further hint,
'That within the Sherwood bounds you saw
'Little John, who is the son-in-law
'Of his friend, old Mat-o'-the-Mint.'

Gilbert, second Earl of Minto, was alleged by the papal authorities

in opposition to one of the latter's amendments, but his rooted dislike of anything that savoured of ecclesiastical pretensions made him a hearty supporter of the principle of the Bill.[1] His next intervention in debate was in behalf of Lord Truro's Bill for the establishment of the new Court of Appeal in Chancery; and later in the session he took part as an expert in the discussions on Chancery reform. But his most notable performance was the passage of arms in which he indulged himself against both the Attorney-General (Sir Alexander Cockburn) and the Prime Minister over the Jewish disabilities. Bethell contended unsuccessfully that the Law Courts rather than the legislation would supply the appropriate remedy for Baron Rothschild and Mr. Salomons; the subsequent tribulations of Mr. Bradlaugh cast doubts upon the applicability of his advice.[2]

Shortly before his election for Aylesbury he had been appointed Vice-Chancellor of the County Palatine of Lancaster in succession to Sir William Page Wood. This gave him a foretaste of judicial work, but the experience was only transient, for he resigned on becoming Solicitor-General in the following year. A piece of preferment which had caused him greater pride and pleasure was his selection, in 1846, to be standing counsel for the University of Oxford. His love for Oxford was a strong and

to have given them to understand during a diplomatic mission to Italy that the British Government would be not unfavourable to the parcelling out of England into Roman Catholic Sees. *Mat-o'-the-Mint* was a character in the 'Beggar's Opera.' Bon Gaultier was the first to apply the nickname to the father of Lord John Russell's second wife.

[1] Hansard, cxvii. 118. Fear of Rome was an obsession with him. At a later date he wrote to Palmerston to protest against the Garter being given to Lord Lovat. On the other hand it was he who, for the first time since the Revolution, placed a Roman Catholic on the English Bench in the shape of Mr. Justice Shee.

[2] Hansard, cxxv. 1246. In the course of the debate Sir Frederick Thesiger had referred to the observance of Easter and Whitsuntide as a proof of Christianity being part of the constitution of the country. 'He might as well have contended,' said Bethell, 'that the use of the word Wednesday, which was derived from Woden, served as a proof to the contrary.'

genuine emotion which he never outlived, and down to the very end his visits to the Master's Lodge at Balliol were a source of as much gratification to himself as to the young men whom Jowett would invite to meet him. It was on one of these occasions that Kinglake, with all the laurels of Mr. Bedwin Sands upon his brow, was describing the habits of 'the ship of the desert.' Lord Westbury suddenly interposed, and, by an effort which rivals the achievement of the German philosopher, evolved from his internal consciousness a camel which cast into the shade all the personal experiences of the author of 'Eothen.'

During the short-lived Conservative Administration of 1852 Bethell established his position in the House by the part he played in the debates which disestablished the Masters, abolished their office, and remodelled the whole system of Chancery procedure. In addition to his own hard-won familiarity with the practice of the Courts, he had been a member of the Commission which had recently investigated the whole field of equity, and he was largely responsible for the Bills upon which Parliament was now engaged. The Commons will generally listen to a man upon his own subject if he is not too insistent. And his mincing speech, his prim precision of manner, and the unexpected turns of his mordant humour amused instead of irritating the House. Then as always it liked the man who showed the best sport, but the time was to come when 'Mr. Beethell' had cause to rue the enmity of those who 'smiled at the jest but never forgave the sarcasm' that was lavished on allies and opponents with admirable impartiality.

From this early period in his Parliamentary career dates his persistent advocacy of the cause of legal education. Not only had the teaching of law fallen into utter desuetude at Oxford and Cambridge, but the Inns of Court were only slowly awakening to their responsibilities. Some years previously he had drawn the attention of these latter bodies to their neglected duty, and it was

due in no small measure to his efforts that lectures and readerships and studentships were gradually established; that the Council of Legal Education, of which he was one of the earliest presidents, was called into existence; and that examinations were made compulsory upon all who sought to be called to the Bar. But Bethell's ideals soared much higher than this, to the creation of a great legal university in London which might impart that instruction in original principles the want of which has been the perennial reproach of the English Bar and is largely responsible for the haphazard and misdirected growth of so many branches of our law.[1]

At the general election of 1852 he was again returned for Aylesbury, with Mr. Layard as his colleague, and on the formation of the Coalition Ministry he was offered the post of Solicitor-General. To have forged so far ahead in so brief a space was a remarkable triumph for one who seemed to have small natural aptitude for public life or for the moods of a popular assembly. Macaulay has been described by his nephew as the worst electioneerer since Coriolanus, and Bethell, in a letter to a member of his family, refers to that play as the leading authority on the joys of canvassing.[2]

As law officer he displayed the same aptitude for business and the same facility in mastering detail which had marked his progress at the Bar. Sir Alexander Cockburn led him as Attorney-General, and there had been no such formidable team since Thurlow and Wedderburn were depicted as the Moloch and the Belial of the Treasury Bench. And what was more surprising, Sir Richard Bethell displayed a conciliatory manner which greatly eased the wheels of debate. He might suavely suggest that the remarks of some honourable and learned friend who had just sat down would have been employed with greater effect if they were capable of having the least application to the subject under discussion; but as a rule his words were softer than butter, and there

[1] Hansard, cxxxi. 163. [2] *Life of Lord Westbury*, i. 106.

was a laudable abstention from anything like 'sharp and taxing speeches.' His power of exposition was of the greatest assistance to Mr. Gladstone in explaining to a non-professional audience the intricacies of the Succession Duty,[1] and he took a prominent part in piloting the Oxford University Bill of 1854 and in drafting its clauses. The aid which he had rendered to the Chancellor of the Exchequer was acknowledged by the latter on his resignation in January 1855, in terms as cordial as they were generous.

> After having had to try your patience more than once in circumstances of real difficulty, I have found your kindness inexhaustible and your aid invaluable, so that I really can ill tell on which of the two I look back with the greater pleasure. The memory of the Succession Duty Bill is to me something like what Inkerman may be to a private of the Guards: you were the sergeant from whom I got my drill and whose hand and voice carried me through.[2]

But his own projects of reform met with persistent ill-fortune; the sons of Zeruiah were too strong for him, and his efforts on behalf of Land Registration and codification bore no fruit. Still more unfortunate was the scheme for strengthening the appellate jurisdiction of the House of Lords, to which such frequent reference has been made in these pages. His pungent allusions to the shortcomings of that tribunal[3] played no small part in arousing the tempest by which the life peerages were

[1] According to Lord James of Hereford, 'Mr. Gladstone was apt to tell how, when passing the Succession Duty Act of 1853, he sent without avail over and over again to the Attorney-General, asking him for his assistance in the House of Commons, and at last an answer, saying that he knew nothing about the death duties, and that the Chancellor of the Exchequer must rely upon the Solicitor-General, was received' (*Journal of the Society of Comparative Legislation* (N.S.), ii. 203).

[2] Morley, *Life of Gladstone*, i. 472 *n.*, and see p. 502, where Bethell writes to Gladstone to say that he is too warmly attached to him to care for a few marks of impatience. The Inkerman metaphor was then fresh, for not more than nine or ten weeks had elapsed since the fighting of the battle.

[3] *Supra*, 73.

wrecked; yet, as Mr. Nash remarks,[1] no one had a better right to criticise the defects of the final Court of Appeal than the counsel who was engaged in the vast majority of the causes that came before it.

Bethell was out of office for a few days during the interregnum of January and February 1855, which followed the resignation of Lord Aberdeen, but he resumed his old position in the Government reconstituted by Lord Palmerston. Within a few months of its formation the existence of the new Cabinet was threatened by the extreme unpopularity of Lord John Russell, and it became apparent that nothing short of his resignation could avert a catastrophe. It was hard to induce that statesman to comprehend the drift of public opinion, and for some days 'lobbying' and rumours filled the Parliamentary atmosphere. Seeing the two Law Officers one evening in eager confabulation, and opining with perfect accuracy that they were discussing the crisis, the Speaker, Mr. Shaw Lefevre, beckoned to Bethell and asked him exactly how matters stood. The answer came promptly in the words of Scripture:

> Then the men of the ship took up Jonah and cast him forth into the sea, and the sea ceased raging.[2]

On Cockburn's appointment to the Chief Justiceship of the Common Pleas in November 1856, Bethell succeeded him as Attorney-General. Henceforward he assumed a far more conspicuous position in the Parliamentary world, and down to his resignation of the Great Seal he continued to be one of the most dominant and picturesque figures in public life. His first beginnings, however, were not auspicious. In his address on seeking re-election at Aylesbury he had indulged in a forecast of the Ministerial programme for the coming session, to which some prominence was given both in the London and the provincial Press. Writing a few days later on Government business, Lord Palmerston reminded him

[1] *Life of Lord Westbury*, i. 170. [2] *Ibid.* i. 166.

that the established practice for members of the Government at public meetings is to dwell on what the Government of which they are members has done, but not to tell the world what that Government intends to do.

The rebuke was emphasised by the enclosure of a cutting from a Staffordshire paper in which certain observations attributed to the Attorney-General were under-scored.[1]

Bethell was not in the habit of meekly accepting rebuke, whether deserved or undeserved. He contended that his speeches had been grossly misrepresented, and that his prognostications referred only to Bills which were openly blazoned on the Ministerial banner. But should the Premier still be of opinion that he had been guilty of an imprudence, ' which I am quite sure you will frankly state without the medium of any newspaper extract,' Mr. Attorney professed ' his readiness to adopt the only course which can relieve the Government from the consequences of my indiscretion.'[2] Needless to say, the explanation was freely accepted, and there was no further suggestion of resignation.

[1] *Life of Lord Westbury*, i. 186. [2] *Ibid.* i. 188.

CHAPTER XI

LIFE OF LORD WESTBURY FROM HIS APPOINTMENT AS ATTORNEY-GENERAL TO HIS ACCEPTANCE OF THE GREAT SEAL

1856—1861

ONE of Sir Richard Bethell's first duties in his new office was to hold the leading brief for the Ministry in the debate on the vote of censure over the *lorcha* Arrow. With the instinct of the true advocate he strove to run his case on the legal and technical merits of Sir John Bowring's action, and to leave the very dubious morality of the British aggression as 'subject for comment' to his adversaries.[1] Though his exertions failed to avert defeat, the speech was long regarded among the classics of Parliamentary oratory. In the dissolution which followed,[2] Bethell was again returned for Aylesbury, but with a Conservative colleague at the top of the poll. Mr. Layard had committed the unpardonable sin of voting against Lord Palmerston on the stand-and-fall division. There was some friction between the two Liberal candidates, or, at any rate, between their agents and supporters, and a process of disintegration had begun which made Aylesbury no longer the same desirable seat as of old.

During the ensuing session Bethell carried a highly popular measure for the punishment of fraudulent trustees, and for the winding-up of insolvent companies. After a hard struggle he got through the Commons the Bill for the establishment of a common law Court of

[1] Hansard, cxliv. 1569.

[2] In March 1857.

Probate and the removal of the probate business from the Episcopal Registries. Another onslaught upon the jurisdiction of the Ecclesiastical Courts still remained to be made.

We have already seen how, in the summer of 1857, Lord Cranworth forced the Divorce Bill through the House of Lords, and on July 24 the Attorney-General rose to move the second reading in the Commons.[1] He was met on the threshold by an unexpected and very unusual proposition on the part of Mr. Henley, one of the most highly respected representatives of the country party, to adjourn the consideration of the Bill for a month. But it was at once apparent that a more formidable personality was to be the protagonist in the strife. Few subjects were ever introduced into Parliament that so deeply stirred the emotions of Mr. Gladstone as those connected with the marriage laws.[2] To his dying day he considered the cheapening of divorce as one of the greatest national calamities of his time, and at this stage he was still imbued with theories as to the relation between Church and State from which he was one day to travel so far. To his mind the whole Christian doctrine of marriage was at stake, and he saw in the Bill an open and avowed inroad into those most sacred relations upon which the fabric of society is reared.

The relations between the combatants had been of the friendliest character while they were colleagues under Lord Palmerston. Gladstone had a very imperfect liking for the members of the Bar, and one of Bethell's remarks to him, 'What stuff lawyers will talk; but 'tis their vocation,' was entirely after his own heart.[3] But in his present position of 'greater freedom and less responsibility' he had found the Attorney-General a strong irritant, and had sharply rebuked him on one occasion [4] for the assumption of

[1] Hansard.
[2] Morley's *Gladstone*, i. 567.
[3] *Ibid.* i. 518.
[4] Hansard, cxlii. 454.

such marked superiority, such exemption from common failings, and such distinction from the ordinary feelings of mankind. The gravamen of the offence of the House, added Mr. Gladstone, is that it has not received with sufficient favour the Bills introduced by my honourable and learned friend.

The struggle over the Divorce Bill occupied eighteen sittings during a particularly oppressive July and August. In a perpetual minority of one to two, Gladstone's only prospect of success lay in wearying out the members of the Government, and Parliamentary obstruction as a fine art is generally considered to date from his tactics in the summer of 1857,[1] a circumstance of which he was not unfrequently reminded in later years. He exhausted every form of the House, he plied his adversaries with a succession of questions, of explanations, of interlocutory speeches that would sorely have tried a more saintly temperament than that with which the Attorney-General had been endowed by nature.

During those hundred encounters, writes Mr. Morley,[2] polished phrases barely hid unchristian desire to retaliate and provoke. Bethell boldly taunted Gladstone with insincerity. Mr. Gladstone, with a vivacity very like downright anger, reproached Bethell with being a mere hewer of wood and drawer of water to the Cabinet, with being disorderly and abusing the privileges of speech by accusations 'which have not only proceeded from his mouth, but gleamed from those eloquent eyes of his, which have been continually turned on me for the last ten minutes, instead of being addressed to the chair.'

The asperity of the combat was sometimes relieved by the splintering of a friendly lance, as when Bethell declared that, if his foeman's lot had been cast in the Middle Ages he would have been acclaimed among the *subtilissimi doctores* as the rival of Duns Scotus and William of Ockham and the Angelic Doctor himself.

[1] But see *supra*, 17.

[2] *Life of Gladstone*, i. 570.

My honourable and learned friend, retorted Gladstone, has complimented me on the subtlety of my understanding, and it is a compliment of which I feel the more the force since it comes from a gentleman who possesses such a plain, straightforward, John-Bull-like character of mind—*rusticus abnormis sapiens crassaque Minerva.*[1]

In the same speech Gladstone accused him, amid loud laughter, of throwing discredit upon scholarship and upon the University of which he was so conspicuous an ornament by refusing to acknowledge any scriptural authority beyond the Authorised Version. All was in vain :

Si Pergama dextra
Defendi possent, etiam hac defensa fuissent.

'Dogged did it,' and Palmerston's intimation that the House would sit through September, if necessary, was more efficacious than the vigilant resourcefulness of Bethell, even though Gladstone declared that the Bill should not be carried till the Greek Kalends. Nothing roused the temper of that statesman so effectually as imperturbability, and the sight of the Attorney-General sitting opposite him composed and calm, and apparently devoting his energies to the mastery of the Shrewsbury Peerage case, added fuel to the flames.[2] On August 21 the Bill was read a third time, after being amended in several important particulars ; the consideration of these in the Upper House exposed the Government to some very narrow shaves, and on one occasion they would have been in a minority but for their proxies. On August 28 the Bill became law. It is pleasant to add that a frank and generous letter from Gladstone to Mr. Attorney restored the good fellowship that had hitherto marked their personal relations with each other.[3]

A critic quoted by Lord Selborne complains 'that Bethell had the unfortunate defect of never appearing to be candid and of never impressing his audience with

[1] Hansard, cxlvii. 846. [2] *Life of Lord Westbury*, i. 226.
[3] *Ibid.* i. 233.

anything more than a vivid perception of his extraordinary intellectual powers.' [1] But by universal consent he had throughout the whole session shown Parliamentary talent of the very highest order, and Palmerston made a most appropriate acknowledgment of his services by offering him the judgeship of the Probate and Divorce Court constituted under the Act. The offer was declined without hesitation; Bethell felt that he had played too active a part in enhancing the salary and the patronage of the new official, and that to profit, however unexpectedly, by his own clauses would cast a slur on his own disinterestedness.[2]

The following year witnessed Palmerston's defeat over the Conspiracy to Murder Bill. Only a day or two before the catastrophe, when opposition to the Government measure for the transference of India from the Company to the Crown had unexpectedly collapsed, Bethell had addressed his chief in words of half-serious warning.

Pal-merston, Pal-merston, for God's sake remember you are mortal and let me stand behind you, like the slave in the Roman triumph![3]

The Attorney-General was, of course, responsible for the Bill, and was involved in the charge of subserviency to the foreigner which, by the special irony of fortune, proved fatal to Lord Palmerston. In the view of many competent legal authorities the existing law was quite sufficient to hit the foreign refugee in such a case as that of the Orsini Plot, and a garbled report of Bethell's speech upon the Bill was made the occasion for an attack upon him by Lord Campbell in 'another place,' to which reference has already been made.

[1] *Memorials, Personal and Political*, ii. 405.

[2] *Life of Lord Westbury*, i. 236.

[3] Yet a week or two earlier Bethell had declared that by the middle of April Palmerston's Government would have become 'an historical fact' (*Life of Lord Granville*, i. 287). His clearness of vision had shown him that the reaction against an exaggerated and accidental popularity had already set in.

He passed quietly and contentedly to the other side of the House, and in the course of the session gave an occasional taste of his quality from the Front Opposition Benches. He enjoyed a long holiday ramble in Italy with his family during the vacation, and Mr. Nash assigns to this period a somewhat serious riding accident in his park at Hackwood.[1] Bethell had always delighted in field sports and in the open air. As a young man in London his recreation was taken in a six-oared boat, starting, after the manner of those days, from the Temple stairs. With the increase of wealth and the acquisition of landed estate he was able to gratify his fondness for shooting, which he indulged in the same precise deliberate fashion as he bagged his game in the Court of Appeal. Even here his love of incongruity and of the gentle art of tormenting would sometimes display itself in the forced initiation of some unwilling visitor into the delights of rabbiting or partridge shooting.[2] How far the other guests enjoyed the humour of the situation may be doubted, and rightly or wrongly a spice of danger was currently associated with Bethell's parties.

Sir Alexander Cockburn was fond of telling how, on one occasion, a keeper received a liberal peppering, and a lively, not to say acrimonious, dispute arose between Bethell and his second son.

How often, Slingsby, said Sir Richard, have I remonstrated with you for handling firearms carelessly. You have now apparently shot one of the keepers, whom I can hear vociferating in the bushes.

Prompted by curiosity Cockburn managed to inquire of the injured man which of the two had shot him. 'Dang 'em, they both did,' was the answer. A year or two afterwards, Sir Richard, in conversation with the Chief Justice, fixed the date of a certain discussion by the visit 'when you shot my keeper, dear Cockburn.'[3]

[1] *Life of Lord Westbury*, i. 135. [2] *Ibid.* i. 243.

[3] Mr. Nash (*Life of Lord Westbury*, i. 245) tacitly denies the existence of any foundation for this story, but Cockburn gave it a very wide

Amongst other country pursuits Bethell devoted himself sedulously and with considerable success to stocking the Loddon with trout artificially hatched. His devotion to fishing, acquired in boyhood by the banks of the Avon, remained with him till his latest years, and, like so many of the greatest lawyers, his tastes were for the simple pleasures of the country gentleman. One of the curious contradictions in his character was the combination of frugal and almost parsimonious habits contracted in early youth with the most liberal and profuse expenditure on his country seats, which he was in the habit of perpetually changing. When he was making an enormous income at the Bar, the mantelpiece in his chambers always displayed a little pile of fourpenny pieces, two of which made up the statutory fare of the hackney coach which drew him from Lincoln's Inn to Westminster. And there is a story, probably *ben trovato*, which illustrates his mingled humour and economy. His own horses once took it into their heads to bolt in a crowded thoroughfare. 'Drive into something cheap,' he is said to have shouted out to the coachman.

The general election of 1859 saw the final severance between Bethell and the constituency which had returned him no less than six times. A second Conservative was in the field at Aylesbury, and the ex-law officer was not minded to take any risks. An invitation to Wolverhampton gave him a perfectly safe seat and a distinguished colleague in the shape of the Right Honourable C. P. Villiers, who, till a short time ago, kept green among us the memories of the Anti-Corn Law League. His connection with the Black Country town was not destined to be of long duration, but it was the occasion of his once famous address to the local branch of the Young Men's Christian Association in which he impressed upon

circulation. The anecdote he does relate of Cockburn's presence at Bethell's shooting parties (ii. 190), though better authenticated, possesses much less point.

his hearers the gospel of benevolence and Christian charity, to the practice of which he attributed such small success as might have attended his own progress at the Bar and in Parliament. Blasphemers laughed, though there were many more deeds of unobtrusive kindness to Bethell's credit than the world recked of ;[1] but the general public, who knew him only as the lord of flouts and gibes, shook their heads and, like St. Gengulphus, 'thought he was coming it rather too strong.'

When Lord Palmerston returned to office, the highest prize in the profession seemed within Bethell's grasp, and he is alleged to have given free expression to his confidence.[2] There were strong forces, however, at work against him. In some influential quarters his views were regarded as too advanced, in others his conceit had given offence, and there was a very strong indisposition on the part of the Premier to lose his services in the House of Commons. We have seen that the difficulty was met by the appointment of Campbell. It was an obvious makeshift, and there is probably a good deal of truth in Mr. Nash's conjecture that the Government were glad to be rid of the extremely candid criticism to which the Chief Justice had been wont to submit their proceedings in previous Parliaments. Bethell was flattered with the assurance that the Ministry could not do without him in his present post, and comforted with the promise that he should succeed Campbell as a matter of right. Palmerston even offered to give him a written undertaking to that effect. But the note was never forthcoming, and he remarks that 'Pam' never looked him direct in the face all the time they were talking.[3]

Acceptance of the new *régime* must have been especially galling to Bethell after some of the bouts that had recently been exchanged between him and the new Chancellor.

[1] See for a piece of rare professional generosity Mr. Nash's account of his conduct in the case of Lumley *v.* Wagner (*Life*, i. 128).

[2] *Dict. of Nat. Biog.* iv. 428.

[3] *Life of Lord Westbury*, i. 274–5.

'Now, sir,' he had remarked in the House of Commons of some ebullition on the part of his present chief, 'if I were speaking the language used by John Thomas to James Styles out of doors, I should pass it by as that species of personality which indicates great want of good breeding and good manners.'[1] But he imposed an unusual mastery upon his feelings; and by Campbell's admission their mutual relations were henceforward consistently pleasant and harmonious. It is pretty plain, however, from Bethell's correspondence, that his opinions on the subject of his lordship underwent no substantial change. And when time at last brought him the object of his ambitions, he was never happier than in applying the test of 'a few elementary rules of law' to the decisions of his immediate predecessor. The hour of promotion was deferred, however, for nearly two years, and in the interval he enjoyed the prestige of an heir apparent, recognised, though without Cabinet rank, as one of the three or four most influential persons in the Administration. The Solicitor-General, Sir William Atherton, whose very existence is to-day almost forgotten,[2] was a common lawyer, and the conduct of the Land Transfer and Bankruptcy Bills, as well as the bulk of the Government business, fell upon Bethell's shoulders.

For a moment he emerges as a subsidiary actor in the painful drama of Constance Kent. The public had been deeply stirred by the mysterious circumstances of the Road murder and by the failure of coroner and magistrates to discover any clue. Bethell himself had been much impressed by the story, and he took the unprecedented step of moving in person, as Attorney-General in the Queen's Bench, for a rule to quash the coroner's inquisition and for the issue of a writ of inquiry to special commissioners. Among the alleged grounds of irregularity was the fact that the return to the inquisition was void

[1] Hansard, cxlix. 7.

[2] But see Lord Selborne, *Memorials, Family and Personal*, ii. 377.

through having been made on paper instead of parchment. This technicality was waived by the Crown, and eventually, after the rule *nisi* had been granted, the application was refused by Chief Justice Cockburn, mainly on the ground that the object of the inquiry was to examine those amongst whom the guilt of the crime necessarily rested.[1]

One of the last cases of public importance upon which Bethell was engaged at the Bar was that of the All Souls' Fellowships. The *bene nati et bene vestiti* of that venerable foundation had found the recommendations of the Oxford Commissioners very unpalatable, and were kicking sorely against the pricks. The new statutes enjoined that the fellowships should be awarded strictly upon the merit displayed by the candidates in their papers on the prescribed subjects of law and modern history. It was notorious that hitherto the examination had played a very subsidiary part in the election, and some of the junior fellows who united academical distinction to advantages of birth contended that the old abuses were still persisted in, and that they could not be remedied so long as the examinations were conducted under the seal of secrecy, and the papers were destroyed unseen by any but the actual examiners. Three of them accordingly, including the late Sir Godfrey (then Mr.) Lushington and the Hon. W. H. Fremantle, now Dean of Ripon, appealed to the Archbishop of Canterbury, as visitor of the college,

against the construction put by the Warden and the majority of the Fellows upon that part of the ordinance of April 1857 of the University Commissioners which relates to the qualification and election of Fellows.[2]

[1] November 1860. A similar application, made fifteen years later to the same judge, was granted, but with small benefit to the cause of justice, in the Bravo case (*Times*, June 20, 27, 1876). Mr. Nash tells us that Bethell's suspicions never once rested on the actual perpetrator of the Somersetshire crime (*Life of Lord Westbury*, i. 308). When Constance Kent made her confession in April 1865, his mind, as we shall see, was only too painfully pre-occupied.

[2] *Times*, January 9–11, 1861.

The appeal was heard in the Library at Lambeth before Archbishop Sumner, with Lord Wensleydale and Sir Travers Twiss as assessors. Bethell led for the appellants with J. D. Coleridge as his junior, and the latter thus describes the Attorney-General's performance:

Nothing could have been better. His reply was the finest and greatest thing I have ever heard at the Bar. He sat all day taking elaborate notes, and there was a good deal to answer. He spoke less than two hours, never touched or looked at a paper, did not leave one point unnoticed, and poured in a flood of powerful invective besides which electrified us. The whole speech too was so beautifully clear, so balanced, so well proportioned, that it seemed as if it must have been composed beforehand, and yet we knew it could not have been. With all his affectation he has *a very great intellect*—the greatest I ever came near or have any belief of in our profession at our time. Bovill and Cairns were *babes* to him.[1]

The case certainly lent itself to Bethell's peculiar gifts.

If the election, he said, in his most honeyed tones, was to be decided by the 'merit' of the candidates in the ordinary sense of the word, what need of a secret discussion? Was there anything in merit that shunned publicity? But if merit in the vocabulary of All Souls' was taken to mean not intellectual merit, not superiority in mental attainments, but those qualities which made a man an acceptable member of the college regarded as a place of society, it was very natural that the discussion respecting it should be private. . . . Under the present system any elector could say, 'Although such a candidate has the best papers, he is not what Dr. Johnson called a *clubbable man*; he would introduce discord into our society; his manners are rude; he is unknown to our society, therefore he ought not to be elected.' 'Merit' at

[1] *Life of Lord Coleridge*, i. 265. The writer adds: 'The Archbishop slept decorously, and this time very impartially.' This must be the occasion alluded to by Mr. Nash (ii. 32), when Bethell, coming out of the robing-room, said to his junior: 'Did you observe the dear Bishop? On the former argument he slept only on one side, but this time he slept quite impartially.'

All Souls', according to the evidence of the Warden,[1] included 'all the various particulars expected to form the character of a gentleman,' and the candidate's general habits of life were to be acceptable to the community, so that if the majority of the members were of aristocratic birth and in the habit of moving in society where a particular description of refinement was acquired, a man without that qualification would not be admitted, whatever might be his intellectual attainments. Merit of that kind could not be discussed except under the seal of secrecy.

The appeal was successful, and the claims of the 'intellectual low-bred poacher,' as Coleridge sarcastically called them, were given for the future at least a fighting chance. The day was not far distant when an All Souls' Fellowship was to become one of the blue ribands of an Oxford career, and when a fair field and no favour was to be made the rule instead of the exception.

Lord Campbell died on June 22, 1861, and on the 27th Sir Richard Bethell received the Great Seal, being raised to the Peerage by the title of Baron Westbury, of Westbury, in the County of Wilts.[2] His promotion was accepted on all sides as a matter of course, and though a writer in the 'Law Review' declared that no man ever ascended the Woolsack with less sympathy on the part of the profession, the Equity Bar rejoiced over the exaltation of their leader and at the dispersal of his enormous practice. At the same time a gentle thrill of relief must have fluttered the hearts of those judges whom he had so long felt it his duty to keep humble. We know now, however, that in one august quarter the appointment was viewed with very mixed feelings. The Queen wrote to her Premier on June 24 that she

approves of Sir R. Bethell as Lord Campbell's successor. Lord Palmerston is aware of the Queen's objections to the appoint-

[1] The Rev. Francis Knyvett Leighton, representative of an ancient Shropshire house.

[2] The softer side of Bethell's character is admirably portrayed in a letter written by him to a playmate of his childhood shortly after his appointment (*Life of Lord Westbury*, ii. 7).

ment; they will have weighed with him as much as with her. If, therefore, he finally makes this recommendation, the Queen must assume that under all the circumstances he considers it the best solution of the difficulty, and that his colleagues take the same view.[1]

There is, I should fancy, no parallel for either the duration or the extent of Bethell's ascendancy at Lincoln's Inn. At an age when many of his rivals were still at college or eating their dinners he had been in the very foremost rank of advocates. From his earliest days he had adopted the principle, 'never give in to a judge,'[2] and he was equally inexorable whether he was arguing before one whom he loved and regarded, such as Vice-Chancellor Shadwell, or one whom he disliked and affected to despise, as Lord Justice Knight Bruce. His bold stand against the discursive and impatient habits of the latter earned him the thanks of the Inner Bar and the approval of the Press.

Your Lordship, he declared, will hear my client's case first, and if your Lordship thinks it right, your Lordship can express surprise afterwards.[3]

To a slightly earlier date must be assigned his delineation of the Court of Appeal in Chancery, *tempore* Knight Bruce and Turner, to which I have already referred:

The Chancellor (Chelmsford) has absolutely no knowledge of an intricate question of real property law like this. But as for the Lords Justices, the prurient loquacity of the one and the pertinacious technicality of the other render an appeal to such a tribunal so unsatisfactory that it will be better to go to a full Court.

[1] *Letters of Queen Victoria*, iii. 564.

[2] *Life of Lord Westbury*, i. 85.

[3] Lyddon *v.* Moss, *Times*, March 14 and 15, and see *Punch*, March 26, 1859, *The Battle of the Big Whigs*. One is reminded of John Clerk's famous retort to Braxfield, 'Hang my client, if you dare, my lord, without hearing me in his defence.'

His opinion of the demerits of Lord Truro was equally comprehensive.

> This case will be the death of me—this case will be the death of me! he was heard to complain. If we had a man capable of understanding the most elementary questions of law or equity there might be some hope of ending it.[1]

Even when praise came from him, it was wont to be bestowed in a somewhat left-handed manner, as when he singled out an eminent judge as an example for all time of the domestic virtues: *expressio unius exclusio alterius*. Mr. Nash dismisses as a ridiculous invention the story that one of the equity judges begged of Sir Richard Bethell that he might be addressed as a vertebrate animal and with as much respect as heaven might be supposed to show towards a black beetle.[2] But the same authority is prepared to accept Bethell's stage aside to his junior, 'Take a note of that; his Lordship says he will turn it over in what he is pleased to call his mind.' 'Yes, some judges are damned idiots!' was his reply to an experienced Writer to the Signet who pressed upon him in consultation the manner in which the Court would most probably view the case. And all the gratitude that fell to the successful suggestion of one of his juniors was the *sotto voce* remark: 'I do believe this silly old man has taken your absurd point.'

The Equity Bench was not exclusively occupied by Solons during Bethell's later days at the Bar, but many of the judges upon whom he vented his sarcasms were men of high legal attainments, of great practical experience, and of unwearied courtesy and patience. Bethell's intellectual arrogance and his confidence in his own powers of making clear what was obscure, and of substituting light for darkness, betrayed him only too often into excesses of speech and conduct which neither their

[1] *Jottings of an Old Solicitor*, 132.

[2] *Life of Lord Westbury*, i. 158. I have commonly heard of the appeal being made by Sir Cresswell Cresswell to Mellish.

wit nor their appositeness could excuse. Words that would have fallen innocuous from other lips had power to scald and blister when uttered in those icy deliberate tones, every syllable of which cut like a lash. Mr. Frederic Harrison charitably suggests that Bethell's

famous tendency to sarcasm was due not to any wish to wound or any ambition to display, but to an instinctive genius for clear-cut phrases coupled with an habitual indifference to the opinion of others.[1]

Mr. Nash adopts a similar line of defence, adding that his sarcasms

were spoken usually in quick irritation at pretentiousness or stupidity. . . . The too caustic wit that made so many enemies sprang from no root of bitterness in the heart. He was singularly free from all personal envy or malevolence.[2]

But it is difficult to believe that Bethell was unconscious either of the pain he was inflicting or of the exquisite temper of the weapon which he wielded. Sir James Graham once said of Disraeli that he had fought his way to power with the tomahawk and the scalping knife, and Bethell's scornful sentences were assuredly swifter than arrows and sharper than swords. When in his least aggressive mood his pleasantries were not always free from offence. 'Mr. Henry Alworth Merewether,' he said one day, after his elevation to the Woolsack, to a distinguished Parliamentary counsel, 'You are getting fat, disgustingly fat; you are as fat as a porpoise.' 'In that case,' was the answer, 'I am evidently the fit companion of the Great Seal.'[3] A more sensitive spirit or a less ready fencer might have thought the personality somewhat gross, and Bethell's metaphors and illustrations, even when veiled in a dead language, were not always appreciated by the tribunals to which they were presented. 'Having exposed the *à priori* arguments

[1] *Life of Lord Westbury*, ii. 265–6. [2] *Ibid.* ii. 266.
[3] *Life of Lord Granville*, i. 479.

of my learned friend,' he was once saying, 'I will now proceed to denude the *à posteriori*——' 'Oh, Sir Richard, Sir Richard!' interrupted a scandalised Lord Justice.

Among his later contemporaries at the Bar he had perhaps the highest opinion of Roundell Palmer, and he was one of the first to foretell the future greatness of Cairns. To another of them, Mr. (afterwards Lord Justice) Rolt, he was conspicuously unfair and ungenerous, using his want of a classical education as a topic for constant sneers, which now and again only narrowly failed to provoke an explosion.[1] In his heart of hearts Bethell, like Hurrell Froude, could not conceive a gentleman being ignorant of Greek. For Malins, amongst others, he entertained and freely expressed a most insulting contempt. 'What a fatal gift is fluency!' was his comment in a very audible whisper as Malins concluded a lengthy and voluble argument. Another of the Chancery silks was famous for lungs of leather and a voice like sounding brass. As he sat down Bethell rose up. 'Now that the noise in Court has subsided I will tell your Honour in two sentences the gist of the case.'

The distinction of being led by Bethell was greater than the pleasure. 'Really, Pal-mer, this loquacious savage appears to know some law,' he remarked meditatively but distinctly as a young barrister from the sister island asserted himself too freely in consultation. 'I think you have made a strong impression on the Court,' said an incautious subordinate at the close of one of Bethell's speeches. 'I think so too; do nothing to disturb it,' was the paralysing acknowledgment; and the junior prudently found that 'he had nothing to add.' On another occasion, as they marched into

[1] For a comparatively innocent example see *Life of Lord Westbury*, i. 90. Amongst other members of the Bar against whom he conceived an unjust but unconquerable prejudice was Sir George Jessel, M.R., to whom he could not be induced to grant a silk gown.

Court at Whitehall, his junior was prancing ahead of him, with brief under one arm and a store of 'authorities' under the other. 'Softly, softly, my young friend,' ejaculated Bethell. 'If we cannot teach these old gentlemen law, at least we can give them a lesson in manners: I will precede you.'

'Get me a case!' he exclaimed audibly, when challenged in the House of Lords as to his authority for one of those sweeping generalisations which laid down the law as it ought to be rather than as it was. 'My Lords,' he said on another occasion, 'such is the law, but as I have to be elsewhere in a few minutes my friend Mr. Archibald will produce to your Lordships abundance of authority in support of it.' Alas! at the conclusion of the oration Mr. Archibald, like Toad-in-the-Hole, *non est inventus*. Mr. Nash[1] dismisses the story as an example of 'sublime *sangfroid*,' but a counsel whom the judges cannot trust implicitly in the statement of a fact or the citation of a case is not usually regarded in the profession with either admiration or respect.

On rare occasions Bethell was mated with a junior as resourceful as himself. 'Keep the case going till I come back,' was his parting injunction as he glided through the door on business 'elsewhere.' Two days afterwards, so he used to relate, when the case and all connected with it had vanished from his mind, he happened to pass by the Court, and there he caught the voice of 'my incomparable junior,' fluent but husky and still engaged in 'keeping the case going.'

[1] *Life of Lord Westbury*, i. 240.

CHAPTER XII

LIFE OF LORD WESTBURY—HIS CHANCELLORSHIP

1861—1865

THE first business which awaited the Chancellor in the House of Lords was his own Bankruptcy Bill, which, after a failure in the previous session, he had at last safely piloted through the Commons. The Peers had amended it in some important particulars, and at the time of Lord Campbell's death the Attorney-General had just persuaded the Lower House to send back their Lordships' amendments *en bloc*. Translated to the Upper Chamber, he found that he must either effect a compromise or lose the Bill, and much to his disappointment he was compelled to jettison the Chief Judge in Bankruptcy, the creation of whose office he considered as the keystone of the arch; and, in his own language, to reduce the utility of the Bill to the level of a watch from which the mainspring had been taken. Thus mutilated it became law, and, though its mortified author declared that for every hydra head of abuse which he hoped to have destroyed seven new ones had arisen,[1] many valuable provisions were retained in it—*e.g.* the abolition of the absurd distinction between bankruptcy and insolvency, and the reduction of imprisonment for debt to a maximum period of twelve months, imposed at the discretion of the Court.

But it was particularly unfortunate that Lord Westbury should have made his *début* under such auspices. He did not affect to disguise his resentment at the

[1] *Life of Lord Westbury*, ii. 11.

manner in which his cherished Bill was being mutilated by the introduction of inconsistent and unworkable amendments. Lord Cranworth, whose gentle virtues and quiet composure were particularly provocative to Westbury, had taken a leading part in reshaping the Bill, and the Chancellor spoke of him and at him in a way which roused the indignation of all his hearers; nor was the more militant Chelmsford treated with greater respect.

> If the Select Committee (of the House of Lords) had no further information before them, he said, as to the contents of the Bill than the knowledge of the subject and of the subject of bankruptcy generally which has been exhibited by my two noble and learned friends, I have no right to be at all surprised at that conclusion. . . . From beginning to end not one word is correct of all you have heard from these two noble and learned lords.[1]

The Peers were not accustomed to be talked to in this way by a new-comer, and it would be difficult to find a body of men to whom the 'cold, hard, sharp, stiletto-like insolence of Lord Westbury'[2] could be more offensive. Like Brougham, he had thoroughly mistaken the tone of the House and miscalculated a force which was altogether new to him. At a very early stage in his novitiate he was warned by Lord Derby that if he desired not to excite animosity in the House he must forbear the use of language which appeared to intimate his belief that he was infinitely superior to all those he was addressing. As time passed by, the sheer weight of his extraordinary intellectual powers gave him a certain ascendancy, but he never won the esteem or the confidence of those whose pride he had so recklessly wounded.

> Will you kindly try to impart to me a little of your exquisite tact in guiding and managing the House of Lords, he had written to Lord Granville immediately after his appoint-

[1] Hansard, clxiv. 1606. The full sting of these sentences lay in that intonation which it is impossible to reproduce.

[2] Mr. Herbert Paul, *History of Modern England*, ii. 399.

ment, and kindly cover and excuse any blunder or *gaucherie* which I may commit in entering on my new career ?[1]

Could Lord Westbury have been able to curb his temper and follow, even *magno intervallo*, that master of Parliamentary demeanour and finesse, his fate might have been very different.

Lord Granville had not regarded the advent of the Lord Chancellor with very pleasurable anticipations. 'Jock Campbell,' he wrote, on the formation of the Ministry, 'is in his eightieth year. When he goes it will be a great loss, particularly as I am afraid it will be impossible to prevent that clever but coxcombical Bethell from succeeding him.'[2] But, a man of the world to the finger-tips, he soon learnt to appreciate the new Chancellor; he could relish his sardonic humour and his rare felicity of phrasing, and he could do justice to those finer qualities which Lord Westbury would reveal to those for whom he felt friendship. Moreover, Lord Granville recognised in him not merely a congenial spirit, but a political ally whose debating powers rendered him invaluable in a chamber where the Government was in a permanent minority.

Lord Palmerston's last years were governed, so far as domestic politics went, by the maxim 'Let sleeping dogs lie'; but the Chancellor was allowed to try his hand at projects of law reform on the broad principles of which all parties were agreed. Undaunted by the maltreatment of his Bankruptcy Bill, he now busied himself with the registration of title to land. His worst enemies have never denied that Lord Westbury was a convinced and thorough-going legal reformer—'a law reformer who was terribly in earnest.' He both felt and expressed the most profound contempt for the system in which he had been brought up and under which he had prospered so exceedingly. The prodigal delays of Chancery procedure, the vain repetitions of Bill and Answer, the

[1] *Life of Lord Granville*, i. 478. [2] *Ibid.* i. 346.

prolix obscurity of conveyancing, the unsatisfactory state of title, the technicality of common law pleading, were all equally abhorrent in his eyes. A mass of unrepealed statutes made it a matter of the greatest difficulty to determine what the law might be on any given subject; a still heavier burden of 'ruling cases' fettered the judges at every turn; while the vested interests of an all-powerful profession seemed to present an insuperable barrier to any hope of change.

Both as an interpreter and a maker of the law he resolved, so far as in him lay, to bring order where chaos long had reigned and to make precedent give way to principle. He would have been more successful had he been less contemptuous of the intellects of those whom he sought to convince, had he made more allowance for their feelings and failures, had he realised that men whose livelihood is threatened not unfrequently show fight. His first efforts were directed against the conveyancers and against what, in a moment of ecstasy, Samuel Warren called the intricate but beautiful system of our real property law. His Bill for the Registration of Title, which had been selected in preference to several competing projects, passed through both Houses with ease and comfort.[1] Its transit was smoothed by the fact that, through no fault of the author, registration was not made compulsory, a circumstance which in the sequel proved absolutely fatal to its success.

Westbury could not conceive that either the present or the future generations—fortunate beyond their predecessors *sua si bona norint*—could possibly refuse such a boon. He had left out of account the *vis inertiae* of poor stupid human nature, the ingrained dislike of Englishmen to disclose their private affairs to anyone but the doctor or the income-tax collector, and the stolid opposition of the conveyancers and attorneys whose occupation he had boasted of destroying. It is only fair to add that the machinery of the Act was both cumbrous and costly.

[1] 25 & 26 Vict. c. 53.

Like its successor in 1875,[1] it was dead from the birth, and six years later a Royal Commission 'wrote its epitaph.'[2] But Lord Westbury should be judged not so much by the measure which actually received the royal assent as by his original and much bolder and more comprehensive scheme. It has been reserved for Lord Halsbury to make registration of title, in principle at least, universal and compulsory; yet though his Act[3] has been in operation for a decade its wheels drive heavily; the Law Society utters a periodical Jeremiad, and the conveyancers still sit in their stuffy chambers, and, like Theseus, seem likely to continue sitting.

Lord Westbury's great project for the final revision of the Statute-book and for the compilation of a complete digest of the laws of England, it is more convenient to reserve for a later page.[4] Mention should be made here, however, of the very useful amendments effected by him in the lunacy laws, which, unhappily, as we have had good cause for knowing very recently, are not always efficacious in keeping within bounds the irrelevancies of a roving inquiry into cases of alleged insanity.[5] An Act to promote the sale and augmentation of the poorer livings in the Chancellor's gift won him gratitude and applause in most unwonted quarters.

Of his character as a judge somewhat conflicting estimates have been formed; perhaps that of Mr. Macdonell in the 'Dictionary of National Biography'[6] comes nearest the truth.

The judgments which he has left are in many ways unique. Our law reports contain no more perfect examples of precise and lucid statement, of concise reasoning, or of polished

[1] Lord Cairns's *Land Transfer Act*, 38 & 39 Vict. c. 87.

[2] *Life of Lord Westbury*, ii. 24 *n.*

[3] 60 & 61 Vict. c. 65.

[4] *Infra*, 283.

[5] These particular clauses are said to have owed their origin to the scandal created by the Windham case, in which Samuel Warren, after a thirty-four days' hearing, directed the jury to find that Mr. Windham was not mad enough to be locked up. *Vide infra*, 301.

[6] Vol. iv. 428.

English,[1] and no judge has striven more persistently than did Lord Westbury to bring every question to the test of principle and to restrain within due limits what seemed to him the excessive authority of precedents. His habit was to brush aside or pass by unnoticed the crowd of cases which had accumulated in his way, and to come to his decision by the light of a 'few elementary rules of law.' Following this method, indeed, he frequently decided a great deal more than the facts of the case required, and the authority of his judgments has been thereby much weakened; but where he had a comparatively clear field, as in the subject of domicile, he succeeded in building up a great portion of the existing law.

Nothing annoyed him more than to be pestered with a mass of cases varying in age, in authority, and in applicability. 'Judge-made law' was his abomination, and his ideal would have been to give statutory authority to a limited number of clearly expressed propositions, and then to determine by pure ratiocination whether a particular state of facts fell within them. But in his pursuit of the ideal he occasionally tripped by the way. Over-subtle and over-ingenious, he was sometimes the victim of his own clear logic, and too prone to assume that what ought to be the law *was* the law. 'Such, my Lords, is the law,' he had been accustomed to say at the Bar; unfortunately, he was not infallible either in his deductions or in his recollection, and though always positive, he was often inaccurate.

I am sorry, he said once, in delivering judgment against some unfortunate trustees, profoundly sorry for the embarrassment in which these gentlemen now find themselves placed. Had they taken the most ordinary precautions, had they employed a firm of reputable solicitors, had they taken the opinion of a member of the Bar, they would never have been enmeshed in the snares which now hold them.

This was a little too much for the learned counsel,

[1] *Splendida arbitria* they have been termed.

whose brief contained an opinion dated some years back and signed 'R. Bethell,' in which his clients were advised to follow the identical course they had pursued with such disastrous consequences.

'My Lord,' he said, 'there is a paper here which I am unwilling to read in open Court, but which I would beg to submit to your Lordship.' 'It is a mystery to me,' continued the Chancellor, with unabashed countenance, when he had perused the document, 'how the gentleman capable of penning such an opinion can have risen to the eminence which he now has the honour to enjoy.'

Westbury, indeed, had never been a profound lawyer in the sense in which the term is applied to the great masters of the craft. As Jowett said of him in another connection, 'his mind was so plastic, and he represented things to himself and to others in so graphic a manner, that he may not have known at the moment whether he was feigning or not.'[1] There are well-authenticated stories which show that in his later years, at any rate, he had either forgotten some of the 'elementary rules of law,' or imagined that he had succeeded in procuring their alteration. It is said that he signed his will immediately *before* instead of immediately *after* his second marriage, and was with the greatest difficulty convinced that under the 18th section of the Wills Act it was rendered void by the ceremony. Again, when one of his sons was engaged in settling the draft of a will, which had been sent as a compliment on his call to the Bar, the Chancellor made him strike out the clause by which the executors were appointed. 'No, no, my dear boy, they have long since been done away with.'

But no one has ever disputed his intuitive genius for going straight to the marrow of a case, his power of disentangling the material from the immaterial, his extraordinary quickness of apprehension, and the unrivalled lucidity of his exposition. He *lisped* not 'in

[1] *Life of Lord Westbury*, ii. 292.

numbers,' but in clear-cut phrase and flawless sentences. Nor was he formidable or impatient to those who appeared before him if only they knew their business, were deferential in manner, and moderately brief in speech.

There are only two objections, he once observed, to the elaborate argument of the learned counsel. It supports a principle of equity that has never been disputed and is indisputable; and it is utterly irrelevant to the application he has made.[1]

In hearing Chancery appeals he infinitely preferred to sit alone: a course in which he was largely guided by his personal dislike of Knight Bruce. But of the Lords Justices as an institution he had never approved, and he regarded them as a pair of crutches for common law Chancellors in general and Lord Truro in particular.

On the first day of his taking his seat on the bench an application was made to set down an appeal before the full Court. 'The case,' said Lord Westbury, 'will be put into the Lord Chancellor's list. The Court *is* full.'[2]

In the House of Lords his colleagues were Lords Chelmsford, Cranworth, and St. Leonards, and though each had his own reasons for disliking the Chancellor, it was not often that the Court was divided. In the Privy Council Westbury was less fortunate. Indian appeals—'curry and chutnee,' as he called them—were a sheer vexation to him, and the spirit and tone which he imported into the hearing of causes ecclesiastical raised up a host of enemies to whom as a secular judge and a politician

[1] *Life of Lord Westbury*, ii. 31.

[2] *Ibid.* ii. 25. I am reminded of an afternoon on the Oxford Circuit when, owing to the nature of the case, all women and boys had been ordered to withdraw. The prosecuting counsel noticed that certain females had not obeyed the injunction. 'I am afraid, my lord,' he began, 'that the Court is not properly constituted.' 'Not properly constituted?' said Sir Henry Hawkins. 'Do you object to me personally, or do you wish one of my learned brothers to sit with me?'

he was only a name. For generations past the jurisdiction of the Court of Delegates, which Brougham had transferred to the Privy Council in 1833, had been invoked almost entirely for the correction of the 'souls' abuses' of the clergy, for the determination of faculty cases, or in disputes arising out of *moduses* and Church rates. But now when charges of heresy and unlawful ritual were brought before a lay tribunal the presence on the Board of the two Archbishops and the Bishop of London was regarded by ardent Churchmen as a very insufficient guarantee against Erastianism.

The objection was one of principle, and the judgments of Lord Hatherley and Lord Selborne have proved no more palatable than those of Lord Penzance or Lord Westbury. But there was something peculiarly exasperating both in the substance and in the manner of Westbury's proceedings which brought the clergy and the 'gentlemen of the long robe' into a state of mutual hostility that survives to the present hour. And the Episcopal Bench was adorned, in the person of the Right Rev. Samuel Wilberforce, by a foeman who was worthy of the Chancellor's steel, and who possessed the knack of drawing on the latter to verbal excesses which there is reason to believe that in his more meditative moods he found reason to regret.

Their first encounter arose out of a Bill introduced by the Bishop for constituting bishoprics in heathen countries without the licence of the Crown. He had ground for hoping that it would go through unopposed, as he had been in communication with the Chancellor and had modified the Bill to meet his objections. To his great chagrin, Lord Westbury assailed the bantling 'with great falsity of statement,'[1] and professed to regard it as a direct attack upon the Royal supremacy. He not only drew a highly coloured picture of the constitutional dangers involved in the nomination of a bishop for Central Africa without the Royal licence, but

[1] *Life of Bishop Wilberforce*, ii. 52; Hansard, clxviii. 226.

in his admiration for the legislation of Henry VIII. he forgot that of Mary and Elizabeth. He spoke as if the Supremacy statute of Henry VIII. had been re-enacted *totidem verbis* by the Virgin Queen; he maintained that the Sovereign was 'Head of the Church,' and materially misquoted the language of the oath of allegiance.[1] Wilberforce was quick to make good his advantage, and succeeded in getting in the last word by way of personal explanation. Next Lord Chelmsford, who had himself experienced quite recently a *mauvais quart d'heure* at the hands of the Chancellor, saw the Bishop in Cockspur Street, and said to him, 'I should think this morning Westbury feels the same sensations mentally that an Eton boy would bodily after an interview with Keate.'

The next meeting was over 'Essays and Reviews.' Dr. Rowland Williams and the Rev. H. B. Wilson had appealed to the Privy Council against the sentence of one year's suspension *ab officio et beneficio* pronounced upon them by Dr. Lushington, the Dean of Arches. Both were charged with denying the plenary inspiration of the Holy Scriptures, and against Mr. Wilson it was also charged that he had denied the doctrine of everlasting life or death. The Court by a majority[2] reversed the inferior tribunal on all points, and Lord Westbury was responsible for the written judgment which he delivered on February 8, 1864. That instrument has been described in very different terms. To Dean Stanley it was a charter of intellectual freedom within the walls of the Establishment.[3] Among mere worldlings its

[1] Mr. Herbert Paul, *History of Modern England*, ii. 399; see 26 Henry VIII. c. 1; 1 & 2 Philip and Mary, c. 8; 1 Elizabeth, c. 1.

[2] The dissentients were the two Archbishops, Longley and Thomson; the Bishop of London (Tait) agreed with the lawyers, Lords Westbury, Cranworth, Chelmsford and Kingsdown.

[3] See *Life of Archbishop Tait*, i. 315. 'No one,' wrote the Dean, 'who was present can forget the interest with which the audience in that crowded Council Chamber listened to sentence after sentence as they rolled along from the smooth and silvery tongue of the Lord Chancellor, enunciating, with a lucidity which made it seem impossible that any other statement of the case was conceivable and with a

effect was well expressed in the famous mock epitaph that is commonly attributed to Sir Philip Rose, though the most pungent line in it is said to have been endorsed on his brief by one of the counsel [1] *currente calamo* :

RICHARD, BARON WESTBURY.
Lord High Chancellor of England.
He was an eminent Christian,
An energetic and merciful statesman,
And a still more eminent and merciful Judge.
During his three years' tenure of office
He abolished the ancient method of conveying land,
The time-honoured institution of the Insolvents' Court,
And
The Eternity of Punishment.
Towards the close of his earthly career
In the Judicial Committee of the Privy Council
He dismissed Hell with costs,
And took away from orthodox members of the Church of England
Their last hope of everlasting damnation.[2]

But to the vast majority of the members of the Church of England the judgment caused the liveliest

studied moderation of language which at times seemed to border on irony, first the principles on which the judgment was to proceed, and then the examination, part by part, and word by word, of each of the three charges that remained, till at the close not one was left, and the appellants remained in possession of the field.'

[1] Charles Bowen.

[2] How far this was justified, at any rate by the printed report, can best be decided by quoting the concluding passage (Moore, 433):

'We are not required, or at liberty to express any opinion upon the mysterious question of the eternity of final punishment further than to say that we do not find in the Formularies, to which this Article refers, any such distinct declaration of our Church upon the subject, as to require us to condemn as penal the expression of hope by a clergyman that even the ultimate pardon of the wicked, who are condemned in the day of judgment, may be consistent with the will of Almighty God. We desire to repeat that the meagre and disjointed extracts which have been allowed to remain in the reformed Articles are alone the subject of our judgment. On the design and general tendency of the book called *Essays and Reviews* and on the effect or aim of the whole Essay of Dr. Williams, or the whole Essay of Mr. Wilson, we neither can nor do pronounce any opinion.'

indignation and dismay. 'High' and 'Low' were for the moment united, and Lord Shaftesbury stood shoulder to shoulder with Dr. Pusey. A declaration of belief 'without reserve or qualification' in the inspiration of the Scriptures and in the everlasting punishment of the wicked was signed by over 10,000 clergymen, and 'Essays and Reviews' was condemned as heretical by the Convocation of Canterbury.[1] During the past three centuries there had been only one precedent for such a course; and it was barely twelve years since Bishop Wilberforce had succeeded in removing from Convocation the gag which had been imposed upon it in 1717. The revival of anything which claimed to be the corporate voice of the Church of England was viewed with grave apprehension by orthodox Whigs, and on July 15, 1864,[2] 'He whom men call Baron Houghton, but the gods call Dicky Milnes,' put a series of leading questions to the Chancellor as to the powers of Convocation to pass synodal judgments on books. As a patron of literature he affected to scent a return to the restriction upon unlicensed printing and the institution of an Index Expurgatorius.

Westbury replied in his best form that there were three modes of dealing with Convocation, since it had been permitted, to his deep regret, to come into action again and transact business:

> The first is, while they are harmlessly busy, to take no notice of their proceedings; the second is, when they seem likely to get into mischief, to prorogue them, and put a stop to their proceedings; the third, when they have done something clearly beyond their powers, is to bring them to the bar of justice for punishment.

The Episcopal Bench of the southern province, he continued, together with all those who had participated

[1] 'This Convocation does hereby synodically condemn such books, as containing teachings contrary to the doctrines received by the United Church of England and Ireland in common with the whole Catholic Church.'

[2] Hansard, clxxvi. 1535.

in the proceedings, had undoubtedly incurred the penalties of a *præmunire*. And then, after expressing his relief that the matter had not yet come to the extremity of sequestration, and after declaring his 'sincere personal regard and affection for many members of the Episcopate,' he explained the reason of his forbearance. 'As a judgment this sentence had no meaning whatever. . . . I am happy to tell your Lordships that what is called a synodical judgment is a well-lubricated set of words, a sentence so oily and saponaceous that no one could grasp it. Like an eel, it slips through your fingers.'

There was no room for doubt as to the person aimed at. Bishop Wilberforce had been the main author and draftsman of the offending decree: his sobriquet of 'Soapy Sam,' explained by himself as an allusion to his being always in hot water and always coming out with clean hands, was a household word. Nor was the possession of a meek and quiet spirit among his adornments. In a white heat of indignation, with all the vigour of a fighting prelate of the middle ages, he retorted on the Ahitophel whom he regarded as above all others 'the enemy of God's truth and Church.' [1]

If a man, he said, has no respect for himself, he ought at all events to respect the tribunal before which he speaks, and when the highest representative of the laws of England in your Lordships' House, upon a matter involving the liberties of the subject and the religion of the realm, and all those high truths concerning which this discussion is, can think it fitting to descend to a ribaldry in which he knows that he can safely indulge because those to whom he addresses it will have too much respect for their characters to answer him in like sort—then I say that this House has ground to complain of having its high character injured in the sight of the people of this land by one occupying so high a position within it. . . . I know enough of the House and of the people of England to know that it is not by trying, in words which shall blister those upon whom they fall, to

[1] *Life of Wilberforce*, iii. 156.

produce a momentary pain on those who cannot properly reply to them that great questions can be solved.

The Bishop completely carried with him the sympathies of the House, and the Chancellor's affected surprise at the construction placed upon his words, and at the heat which they had evoked,[1] was received in chilling silence. Henry of Exeter, not unmindful of a former passage of arms with Earl Grey,[2] wrote to thank him for his triumphant display of eloquence—'the noble and learned personage who provoked the conflict must have felt (thick-skinned as he may be) the flogging which he drew down upon himself'; and Lord Derby deemed himself fortunate to have been spared the pain 'of witnessing the Chancellor's disgraceful exhibition.'

Lord Westbury had indeed made a serious blunder. It was one thing for the Prime Minister in the crisis of a great constitutional battle to advise the spiritual Peers to set their House in order. It was another thing altogether for the Keeper of the Queen's Conscience to make them a target for contemptuous raillery. Nor had he even the advantage of an inexpugnable logical position. Archbishop Longley, in a protest which carried quite as much weight as the fiery words of Wilberforce, explained that the action of Convocation was taken under the advice of Sir Hugh Cairns and Mr. Rolt, Q.C. And, whatever might have been the action of Henry VIII. or Thomas Cromwell in similar circumstances, it is extremely unlikely that any Court of Justice under Queen Victoria would have held that a synodal judgment involved the penalties of a *præmunire*.

[1] Mr. Reginald Wilberforce is not quite happy in styling his father's invective 'a calm and dignified rebuke,' though he fortifies himself with a dictum of Lord Chelmsford to that effect' (*Life of Bishop Wilberforce*, iii. 144–45).

[2] *Ante*, vol. i. 91.

CHAPTER XIII

LIFE OF LORD WESTBURY—HIS DOWNFALL AND LATTER DAYS

1865-1873

LORD WESTBURY'S term of office was fast nearing its close. A certain Mr. Leonard Edmunds, who combined the office of reading clerk in the House of Lords with that of clerk to the Commissioners of Patents, had been guilty of irregularities in connection with public funds which had come into his hands in the latter capacity. The Chancellor, as chief of the Commissioners, directed an inquiry, and on the preliminary report ordered charges of malversation to be framed against the delinquent official. But on Edmunds' making application to be allowed to resign his office, Lord Westbury consented to stay the proceedings on his doing so and accounting to the Treasury for all sums due from him. Edmunds then resigned and at once paid in the sum of 7,872*l.*, but it appeared on further investigation that he still owed over 9,000*l.*

Meanwhile there remained his office in the House of Lords, and this also he was prepared to resign if he could hope to receive the usual retiring pension. The Chancellor, holding that his misconduct in the one office ought not to prejudice him in the other, undertook to do all he could, 'with propriety,' to obtain the pension, and presented Edmunds' petition in that behalf to the House of Lords. The matter was referred to a committee in the usual way; the Chancellor made no communication to it of the facts about Edmunds which had come to his knowledge, and that worthy was granted a pension of

800*l.* a year without more ado. The scandals in the Patent Office, however, were matters of common notoriety; an uproar was made in the Press, and the Chancellor's position was not improved by the fact that he had presented his second son Slingsby, who was already in the enjoyment of a London registrarship in bankruptcy, to the vacant clerkship in the House of Lords; though, as the vacancy must have been created whether Edmunds resigned or was dismissed the relevancy of this fact is not apparent.

On March 7, 1865, the Chancellor, with the full knowledge and consent of his colleagues in the Cabinet, moved for a select committee of the House of Lords to inquire into the circumstances of the resignation and of the pension. Lord Westbury tendered himself as a witness, and on May 4 the committee made their report. They expressed regret that the charges against Edmunds had been withdrawn, and that his resignation of the Patent Office had been accepted, and they held that the Chancellor had failed in his public duty in the matter of the pension.

It was incumbent upon the Lord Chancellor, who presented the petition of Mr. Edmunds to the House of Lords, in some manner to have apprised the Parliament Offices committee of the circumstances under which the resignation by Mr. Edmunds of the clerkships had taken place, with which the Lord Chancellor was officially acquainted, and not to have left them to decide the question of a pension with no clearer light than that which could be derived from vague and uncertain rumours.[1]

They added as a salve that there was no reason to believe that the Chancellor 'was influenced by any unworthy and unbecoming motive in thus abstaining from giving information.' But even so the report was a humiliation to the highest legal authority in the realm. Before the committee had begun its investigations the Chancellor had expressed both to Lord Palmerston and to Lord Granville his wish to be allowed to retire. The

[1] *Report of Select Committee*, xiii. xiv.

request was refused on the ground that he could not be spared, but Palmerston, in his heart of hearts, must have felt some regret for the supersession of Cranworth. It was obvious that the Chancellor was to be used as a whip in the hands of the Opposition, and a fresh cause of offence was ready to hand.

Deeply dissatisfied with the whole administration of the Bankruptcy Acts, Westbury had instituted a very rigorous and searching inquiry into the working of the district registries, which revealed a terrible waste of public money and the existence of gross abuses. Condign punishment was meted out to the offenders, and one of the worst cases was that of Leeds, where the registrar, Mr. Wilde, was informed by the Chancellor's orders that unless he immediately applied to be allowed to resign he would be called upon to show cause in open court why he should not be dismissed. The Chief Registrar in Bankruptcy, Mr. Cooper, in conveying this intimation to Wilde, made the somewhat officious suggestion that if he applied to resign on the ground of ill-health he might obtain a pension; an appropriate form of petition was enclosed in the letter.

The petition, supported by a very weak medical affidavit, was duly presented to the Chancellor, who accepted the resignation and granted the pension. He afterwards admitted that he was 'painfully struck with the great inconsistency of having directed him to be served with a notice to show cause why he should not be dismissed.' The vacant office was given to a barrister named Welch, who was able to adduce satisfactory testimonials from the leaders of the Northern Circuit. The circumstances attending his appointment were never fully explained, but, by his own admission, he had lent considerable sums of money to the Chancellor's eldest son.

This son, popularly known as 'Dick Bethell,' had long been a thorn in the Chancellor's flesh. His extravagances were notorious, and his appointment to a

bankruptcy registrarship in London some time previously had been received with great disapproval by both branches of the legal profession. This post he had recently been compelled to resign, and at the time of the Leeds vacancy he was himself an undischarged bankrupt. The idea that he, or anyone else, ever corruptly influenced Lord Westbury may be put aside without hesitation. But it is only too evident that he allowed it to be understood that money lent to him would be as bread thrown upon the waters. In fact, he seems to have 'held himself out,' as a dispenser of patronage after the fashion of Mrs. Marianne Clark in the days of the gallant Duke of York. Amongst his acquaintance was the same Mr. Cooper who had facilitated the resignation of Mr. Wilde, and this gentleman, with several others, had been urgent—very impertinently as it appeared to the outside world—to induce the Chancellor to appoint his eldest son, after all that had happened, to some fresh office of public trust.[1] This Lord Westbury positively refused to do, nor does it appear that the Leeds registrarship was even suggested to him in this connection, but the rumour was sedulously circulated that the existing arrangement in that town was merely temporary and destined to enure for the benefit of Dick Bethell.

Attention was drawn to the Leeds registry scandal in the House of Commons on May 15,[2] and a select committee was nominated, before which, as in the Edmunds case, the Lord Chancellor gave evidence. The committee reported that the pension to Mr. Wilde was granted hastily and without due investigation:

> Such haste and want of caution necessarily gave rise to suspicion that a vacancy in the office was the object sought, rather than justice to the officer or the public.

[1] As was written at the time, the Chancellor 'was worried by a set of people who seemed devoid of all sense' and who succeeded in involving him in a network of 'sordid and stupid intrigue.'

[2] Hansard, clxxix. 293.

They considered that no improper motive was to be attributed to the Chancellor, and they entirely exonerated him from all knowledge of what was going on behind his back with regard to Mr. Welch's appointment. But they more than hinted that corruption of a character which had never been imputed to an English judge since the days of Lord Macclesfield was rife among some of those who surrounded the Keeper of the Great Seal.

Immediately on the publication of the report the Chancellor begged again that he might be allowed to resign.[1] Palmerston again refused, and declined to inform the House of Commons that the resignation had been tendered. He clung to his favourite tactics of bluff, and professed entire confidence that the storm would blow over and leave the fabric intact. As more than once in his career, Palmerston had made a great miscalculation. If Westbury had been the most genial, the most humble-minded, the most popular of men, his continuance in office after two such reports, one in either House, would have been very difficult.

On July 3 Mr. Ward Hunt, who had been chairman of the Commons Committee, moved a formal vote of censure from the Front Opposition Bench on the ground that the laxity of practice and want of caution of which the Chancellor had been found guilty were calculated to throw discredit on the administration of his great office.[2] The Chancellor was defended by three ministerial lawyers, the Lord Advocate (Mr. Moncrieff),[3] the Attorney-General (Sir Roundell Palmer), and the Hon. George (afterwards Mr. Justice) Denman, who was Palmerston's colleague in the representation of Tiverton, and had himself, as he told the House, been contemptuously snubbed by Sir Richard Bethell. The attack was supported by that strange meteoric figure, Mr. (afterwards Sir John) Pope Hennessy,

[1] Letter of Lord Westbury to Lord Palmerston, dated June 26, 1865 (*Life*, ii. 128).

[2] Hansard, clxxx. 1045.

[3] For his appreciation of Lord Westbury see *Life*, ii. 269.

and by Mr. Edward Pleydell Bouverie, the latter of whom imported into the debate a bitterness that had been absent from the speech of the mover of the resolution. He hinted roundly at various rumours to the Chancellor's detriment which were in current circulation, but he expressly disclaimed all imputation of personal corruption.[1] The defence amounted to little more than a plea of confession and avoidance, with an appeal to the ability and thoroughness displayed by Lord Westbury in the discharge of his judicial and legislative duties. Palmer, however, made a good point by showing that but for the Chancellor's own investigation into the working of the Patent Office and the Bankruptcy Courts neither of the scandals would have been brought to light.

The feeling of the House was unmistakably hostile, and on the Premier's moving the adjournment of the debate he found himself in a minority of fourteen, ayes 163, noes 177. Palmerston was advised by the Whips that a division on the substantive motion would be even more disastrous, and he allowed the vote of censure to be put and agreed to.[2] Lord Westbury was living at that time in Lancaster Gate, a locality which was then on the verge of the open country; a groom with a swift horse waited in Palace Yard to bring the news of the division. The Lord Chancellor exhibited all his customary equanimity at the dinner-table, and, when the usual hour for retiring arrived, he took up his candle and bade the household good-night as serenely as if nothing were at stake. Long after midnight the sound was heard of a messenger galloping furiously, and a letter was brought in bearing the Prime Minister's signature on the cover. It was taken upstairs and Lord Westbury

[1] See Hansard, clxxx. 112, and Selborne, *Memorials, Family and Personal*, ii. 488.

[2] The motion actually carried was an amendment proposed by Mr. Bouverie on the original motion of Mr. Ward Hunt. See *Life of Lord Westbury*, ii. 129, 136. The minority included Charles Neate. *Vide supra*, 227.

was aroused from a calm untroubled slumber to learn that his public career was at an end.

I am afraid, wrote Lord Palmerston, that after such a resolution adopted by the House of Commons I can no longer urge you to abstain from carrying into effect your long-formed intention.

In his admirable 'Life of Lord Granville,' Lord Fitzmaurice has declared that Westbury fell a sacrifice to the same clerical animosity which proved fatal to the historian of the Council of Trent.[1] But, so far as personal animosity entered into the matter at all, it must be looked for in quite another quarter. 'Apart from his peculiarities of speech and manner,' admits Mr. Nash,[2] 'Lord Westbury's marked defiance of conventionalities at this time naturally exposed him to obloquy;' and he had contrived to give dire offence to certain influential personages in whom neither the will nor the power to retaliate was lacking. This was the pinion that impelled the steel, and, moreover, when his need was the sorest the voice of his own profession was strongly against him not merely for his bitter tongue, and his assumption of moral no less than intellectual superiority, but for the discredit which his 'culpable laxity' had brought upon the most honourable office in the realm.

His offence was the offence of Eli,[3] and he was called upon to pay the penalty. Ruthless to the world at large and scornful of public opinion, he was tender-hearted and complaisant to excess in all that concerned his children and his friends; 'where his affections were involved he

[1] i. 478; '"Agnosco stylum ecclesiae" is said to have been the observation of Fra Paolo Sarpi when he felt the dagger of the assassin in his throat'; and see Mr. Herbert Paul's *History of Modern England*, ii. 377, for the estimate of a writer whose sympathy with clericalism is, to put it mildly, imperfect.

[2] *Life of Lord Westbury*, ii. 111.

[3] The late Dr. Maclear told me that he was preaching in the Temple Church the Sunday after Westbury's downfall, and, without the smallest thought of its bearing on current events, chose 1 Samuel, ii. 17, for his sermon.

LORD WESTBURY

From a photograph

was almost incapable of saying "No." '[1] Had he been bent upon wilfully abusing his position it is incredible that a man of Westbury's extraordinary astuteness would have been guilty of the fatuous simplicity, to use Mr. Ward Hunt's phrase, which dogged every step in the Leeds imbroglio. On the other hand, we can imagine what he would have said if the same defence which was put forward on his behalf in the House of Commons had been raised before him at Lincoln's Inn in the case of a breach of trust.

The fact is that Lord Westbury, like some other eminent lawyers, was a mere child in the hands of unprincipled intriguers. He had mixed comparatively little with the world, he knew it not from men but from briefs, and he entertained an overweening contempt for his fellow creatures.

Strange as it may seem, wrote Lord Selborne,[2] there was in him, mixed with all that was artificial, an element of extraordinary simplicity (what the Greeks call εὐήθεια), a want of tact and practical good sense, in which may be found the explanation of the errors and oversights which produced his fall. His mind was not sufficiently in touch with the minds of other men. His affections and natural dispositions were strong and generous, but his individual life was in a contracted world, which prevented him from thoroughly understanding himself or the proprieties of his position, and blinded his eyes to some things which it was dangerous not to see. He was no exception to the rule that the golden mean is better for a man than too great prosperity. Great prosperity threw his mind off its balance. But there never ceased to be in him a nobler element, of which I personally had frequent experience.

And this nobler element was made apparent to a world which had little suspected it in the last speech made by Lord Westbury from the Woolsack. On

[1] There are many well-authenticated stories of his liberality in professional matters (*e.g. Life*, i. 124) and he could exhibit great consideration towards those with whom he had to deal officially.

[2] *Memorials, Family and Personal*, ii. 491.

July 6 in a crowded house and amid profound silence, he announced to 'the frowning peers' the Queen's acceptance of his resignation. The step which he had now taken he would have taken months ago, had he followed the dictates of his own judgment and acted on his own views alone.

My Lords, he said, I believe that the holder of the Great Seal ought never to be in the position of an accused person, and, such unfortunately being the case, for my own part, I felt it due to the great office that I held that I should retire from it and meet any accusations in the character of a private person. But my noble friend at the head of the Government combated that view, and I think with great justice.

With regard to the opinion which the House of Commons had pronounced, he did not presume to say a word.

I am bound to accept the decision. I may, however, express the hope that after an interval of time calmer thoughts will prevail and feelings more favourable to myself be entertained.

And in conclusion, after referring to the measures which he had carried through Parliament and the manner in which he had striven to discharge his judicial duties both in that House and in the Court of Chancery, he made a dignified and touching appeal.

My Lords, it only remains for me to thank you, which I do most sincerely, for the kindness which I have uniformly received at your hands. It is very possible that by some word inadvertently used, some abruptness of manner, I may have given pain or exposed myself to your unfavourable opinion. If that be so, I beg of you to accept the sincere expression of my regret, while I indulge the hope that the circumstance may be erased from your memories. I have no more to say, my Lords, except to thank you for the kindness with which you have listened to these observations.

This appeal, uttered 'in the dark hour of shame,' won for Lord Westbury a place in the hearts of his

audience and of his countrymen generally which he had never reached in the plenitude of his full-blown dignity.

> Nothing in his life
> Became him like the leaving it; he died
> As one that had been studied in his death
> To throw away the dearest thing he owed
> As 'twere a careless trifle.

And a revulsion of feeling in his favour has continued down to the present moment. Yet the echo of those stately sentences had scarcely died away when his old mocking humour reasserted itself. Lord Ebury, a prominent Evangelical peer, had recently been defeated over a Bill intended to effect certain changes in the Burial Service. As Lord Westbury was leaving the House of Lords he met him:

> My Lord, he said, with all his slow, deliberate utterance, you can now read the Burial Service over me with any alteration you think proper.[1]

On the following day he took the train to Windsor to deliver up the Great Seal, and by a strange chance, as he was leaving the Queen's closet he brushed elbows with Bishop Wilberforce. The 'saponaceous' debate had been followed by a complete rupture of all friendly relations between the Bishop of Oxford and the Chancellor, which still prevailed in spite of an attempt on the part of the latter to force a reconciliation.[2] On this occasion not a word was exchanged, but the Right Reverend Samuel had the satisfaction of noting in his diary that Westbury's fallen look moved his compassion:

> Later on I met him on the broad staircase looking quite *down* as he wandered alone into the town.

[1] See the *Reminiscences of Mr. Frith, R.A.*, i. 347.

[2] 'He sent Lord St. Germans to ask me to speak to him on the Woolsack, and then asked me to take once more his hand, and hoped that I had "enjoyed my vacation and shot many pheasants"' (*Life of Wilberforce*, iii. 143).

One afternoon in the following session, Wilberforce and his fallen adversary met face to face in the lobby of the House of Lords. Westbury stopped him and said, 'My Lord Bishop, as a Christian and a bishop you will not refuse to shake hands.' The overture was accepted, and Westbury asked him if he remembered where they last met. 'No,' answered the Bishop, more tactfully than truthfully. 'It was in the hour of my humiliation,' continued the former, 'and I felt inclined to say "Hast thou found me, O mine enemy?"' In relating the story the Bishop used to add, according to his biographer,[1]

> I never was so tempted in my life as I then was to finish the quotation, but by a great effort I kept it down, and merely said, 'Does your Lordship remember the end of the verse?' 'We lawyers, my Lord Bishop,' was the reply, 'are not in the habit of quoting part of a passage without knowing the whole.'

It was highly probable, adds the Bishop, that Westbury's first action on going home was to search the Scriptures for the context. If he did so, he would have read these words, 'Yea, I have found thee, because thou hast sold thyself to work iniquity.' Westbury had taken up the burden of Ahab.[2]

It is evident from such portions of his correspondence as have been published that the ex-Chancellor felt his fall and 'disgrace' very bitterly.[3] His one deep anxiety was that the Premier 'as a last act of affectionate friendship' should state that it was not his attachment to office which had exposed him to the censure of the Commons, and that, during the last few months, he had repeatedly begged to be allowed to resign.

Mr. Gladstone, in a passage which I have already referred to more than once, has declared that of all the Chancellors with whom he ever served in a Cabinet

[1] *Life*, iii. 144.
[2] 1 Kings, xxi. 20.
[3] *Life of Lord Westbury*, ii. 137 *et seq.*; *Life of Lord Granville*, i. 483.

Westbury was most inefficient as an adviser.[1] This depreciatory judgment was certainly not shared either by Lord Palmerston or by Lord Granville, to the latter of whom Westbury's ready tongue and piquant sayings were especially congenial; and on many grounds his departure was a serious loss to the Ministry. Both on the intricate points of international law arising out of the American war and in defence of the general policy of the Government his aid had been constant and his resources inexhaustible.[2] Moreover, though nothing like the personal rancour of Lord Brougham was to be anticipated, his future position on the cross benches was likely to make him a severely impartial critic of his old friends.[3]

The months immediately succeeding his resignation were spent by Lord Westbury at Pistoja, near Florence, where he had purchased an estate. In the spring of 1866 he returned to London and resumed his attendance at the hearing of appeals in the House of Lords and Privy Council. It was in one of the first of these judgments [4] that he made use of the unfortunate expression, 'the inferior persons of the Trinity,' which he did his best, both in private correspondence and by a note to the official report, to correct. After the death of Lord Kingsdown, in October 1867, he generally presided in the Judicial Committee of the Privy Council, and was thus brought into close and friendly relations with Mr. Henry Reeve, the accomplished editor of the 'Edinburgh Review,' who had succeeded Charles Greville as Registrar. The following letter from Lord Westbury

[1] It may be doubted whether Gladstone ever really forgave the struggle over the Divorce Bill, nor were Westbury's ecclesiastical judgments to his liking.

[2] *Life of Lord Granville*, ii. 484.

[3] 'The Duke of Somerset and Lord Westbury,' wrote Lord Blachford (*Letters*, 340) a year or two later, 'have established a corner for themselves, just behind the Ministerial Bench, a kind of little, very little, Adullam, in the most effective place, geographically, for being "nasty."'

[4] Parker *v.* Leach, L.R., 1 P.C., 312.

gives a pleasant picture of him in his lighter vein when writing to those whose qualities he could appreciate and respect: [1]

Hinton St. George, Nov. 25, 1869.

Mrs. Reeve, when I had the pleasure of seeing her at Hinton, gave me an assurance that I should not be troubled this year with any request to attend the Privy Council. Your letter therefore is an act of *gross domestic insubordination*, a kind of petty treason. Formerly it was the act of the husband that bound the wife; *mais nous avons changé tout cela;* the act of the wife binds the husband. I appeal unto Caesar. It is very easy for Lord Chelmsford and yourself, who have your town houses in order, your servants, horses, carriages, and whole establishments, not omitting the *placens uxor*, to talk of the *patriotic duty* of attending the Privy Council—having nothing else to do and wanting amusement; but my house is thoroughly dismantled, having been under repair; I have not a room to sit down in with comfort, nor servants to attend to me, nor a cook to cook my dinners, nor any of those *solatia*, or *solamina* which you have in profusion. Yet you, with great unconcern, desire me to quit my family, and all my amusements and enjoyments, that I may come to town to endure complete wretchedness, and have a bad dinner and an indigestion every day, *ut plebi placeam et declamatio fiam.* If you think this reasonable and right, I am sure you have left all sense of reasonableness in Lusitania. Besides, have you not a plethora of judicial wealth and power? Have you not the Lord Justice, who has little else to do; and the Admiralty Judge; and that great Adminiculum, the learned and pious man whom, *honoris causa*, I call Holy Joe? But to speak more gravely. Had I the least conception that I should have been wanted—that is, *really*

[1] Reeve's considered judgment on Westbury was 'a strange mixture of intellectual power and moral weakness' (*Memoir*, ii. 151). At an earlier page of the same volume Mrs. Reeve, in speaking of a dinner party at which Lord Westbury was present, describes him as resembling Falstaff and Lord Bacon rolled into one (*ibid.* 125). She may have been thinking of the classic description of Brougham by Samuel Rogers, 'There go Solon, Lycurgus, Demosthenes, Archimedes, Sir Isaac Newton, Lord Chesterfield and a great many more in one post-chaise.'

wanted—I would have made other arrangements than I have done.[1]

The written judgments required in the Privy Council were always a great vexation to his spirit.

I imagine (no doubt from vanity), he wrote to Mr. Reeve,[2] that at the end of the argument I could have pronounced *viva voce* a much more effective and convincing judgment than that which I have written. The *vis animi* evaporates during the slow process of writing; the conception fades and the expression becomes feeble. What we shall do with the other case of Mackonochie I dread to think. I wish we had knocked it off while the iron was hot, as we used to do in the running down cases.

It was a little earlier than the date of these letters, and when Lord Colonsay was alive and Lord Westbury's pet aversion, that the latter met Sir William Erle, recently retired from the Chief Justiceship of the Pleas.

'My dear fellow,' said the ex-Chancellor, 'why do you not attend the Privy Council?' 'Oh, because I am old and deaf and stupid.' 'But that's no reason at all, for I am old, and Williams is deaf, and Colonsay is stupid, and yet we make an excellent Court of Appeal.'[3]

So highly were Lord Westbury's services appreciated that in December 1868, when the elevation of Sir William Page Wood to the Woolsack created a vacancy for a Lord Justice of Appeal, he was sounded as to his willingness to resume a definite post on the Judicial Bench. He refused, though much gratified by the terms in which

[1] *Memoir of H. Reeve*, ii. 166. 'Holy Joe' was a nickname originally conferred by O'Connell upon Sir Joseph Napier, the Irish judge who had succeeded Lord Colonsay in the Judicial Committee in March 1868.

[2] *Ibid.* ii. 147.

[3] In the year 1889 Sir Ventris Field and Sir William Grove both resigned their offices as Judges of the High Court. The former was made a peer on the ground that his services were required in the appeals before the House of Lords, the latter was merely sworn of the Privy Council. 'How is it, Grove,' said a friend, 'that they haven't made you a peer like Field?' 'I suppose because I am only deaf of *one* ear.'

the offer was made. It was renewed upon the death of Lord Justice Selwyn in the autumn of the following year, and this time Westbury gave a conditional acceptance, by consenting to hold the post for a time, if by so doing he could relieve the Government from any embarrassment. He strongly urged, however, that there was no present necessity for filling up the office at all; Lord Hatherley and Lord Justice Gifford, he urged, were perfectly capable of discharging the duties of the Court. The advice was taken, and no further pressure was put upon him. When the next avoidance came his health had begun to show signs of failing: he had met with a series of accidents, one of which was the beginning of the malady which eventually proved fatal.

The intervening years had seen him busy with a monumental project, a substantial portion of which he lived to accomplish. From his first entry into the House of Commons he had never ceased to urge the hopeless chaos of our statute law, the thousand obsolete and contradictory enactments, the unsatisfactory manner in which Bills were drafted, amended, and passed, the absence of any machinery for observing their operation, and noting their defects.

> Take any particular department of the common law, he had said in 1857 in an address to the Juridical Society,[1] take, if you please, any particular statute. Why is there not a body of men in this country whose duty it is to collect a body of judicial statistics, or, in more common phrase, make the necessary experiments to see how far the law is fitted to the exigencies of society, the necessities of the times, the growth of wealth, and the progress of mankind? There is not even a body of men concerned to mark whether the law is free from ambiguity or not, whether its administration is open to any objections; whether there be a defect either in the body or conception of the law, or in the machinery for carrying it into execution.

As the first step towards a system of rational legis-

[1] Quoted in *Life of Lord Westbury*, i. 190.

lation he placed the digesting and codification of the existing laws. His most successful speech as Chancellor was delivered upon the introduction of the Statute Law Revision Bill of 1863, in which he pressed the necessity of a revision not only of the statutes but of the maze of case law which had grown up since the year-books of the Plantagenets. He pressed for

> an annual revision of the reported cases, with power to determine what is to be regarded as authority and what ought not to be quoted hereafter for the purpose of determining the law. All this might be accomplished by the institution of what is called a Department of Justice.[1]

A letter addressed, with pathetic irony, to that eldest son who was to prove his undoing, outlined the function of such a department. It was to be composed of young barristers of proved ability, who should work, under the direction of the highest legal officers, on the formation of a digest of the cases embodying, or illustrating, or showing the applicability of some portion of the living law.[2]

An Act of Lord Campbell's had cleansed the Statute Book for the period 1770 to 1858. Lord Westbury's Act of 1863 applied the same process to the period from Magna Charta to the Revolution, and a subsequent Act passed by Lord Chelmsford in 1867 covered the intermediate years 1688–1770. The classified index to the statutes, which is still issued quinquennially, was a suggestion of Lord Westbury's; and, as a means towards the other great branch of law reform which still remains unaccomplished, a Royal Commission was appointed in Lord Chelmsford's second Chancellorship 'to inquire into the expediency of a digest of law, and the best means of accomplishing that object and of otherwise exhibiting

[1] Hansard, clxxi. 775. Curiously enough he could not be induced to take any interest in the amalgamation of the competing Law Reports and the formation of the Council of Law Reporting. Daniell, *History of the Law Reports.*

[2] *Life of Lord Westbury*, ii. 62.

in a compendious and accessible form the law as embodied in judicial decisions.'

Westbury was one of the original Commissioners, and succeeded to the chairmanship on the death of Lord Cranworth. Of that Commission Mr. Frederic Harrison, the secretary, is the only surviving member, and he supplied Mr. Nash with some very interesting recollections from which I extract the following:[1]

The great problem of consolidating the whole law of England, the fusion of law and equity,[2] and the practical codification of both on a uniform plan, had long and deeply engaged Lord Westbury's mind. His intellect had an extraordinary tendency to symmetry—a turn peculiarly rare in an English public man, and almost unknown in an English lawyer. The various schemes for simplifying and organising the law which he continually put forth in public and private were, I think, due quite as much to irresistible impulses of his mental constitution as they were to any ambition of public achievement. As a lawyer, his mind had, indeed, something of the qualities of Lord Bacon's, both on the stronger and on the weaker side. The restless desire to bring order out of disorder, to classify, group, and harmonise ideas outstripped in both the knowledge of details and the stubborn realities of facts. It may be doubted if Lord Westbury had ever been sufficiently great a lawyer to succeed in the gigantic task of consolidating the whole range of English law. Probably at that period of his life such a task was wholly beyond the remaining powers he possessed. I think he early realised the fact that under the conditions imposed on him, and with the materials which the Commission supplied, it would be impossible to do more than to furnish suggestions and specimens for the future, and to direct attention to the extraordinary difficulties of the task. Accepting this as inevitable, he applied himself to the work in hand with much freshness and versatility. He was then much past

[1] *Life of Lord Westbury*, ii. 165.

[2] This fusion, as embodied in Lord Selborne's Judicature Act, won a hearty support from him, which, however, he appears to have afterwards retracted to a certain extent. The state of his health prevented him from discussing the Bill in Parliament (*Memorials, Personal and Political*, i. 302).

his highest powers of concentration and laborious application. But his ingenuity, wit, and felicity of brain had never been greater.

The result was sheer disappointment; after five years of fruitless labour the Commission ceased to exist, nor has the experiment been repeated since the similar failure which attended the efforts of Sir James Fitzjames Stephen to place a criminal code on the Statute Book. That great jurist has deplored, in the same breath, our national incapacity for undertaking any of the great measures which require foresight and statesmanship and 'our inability to make use of a great legal reformer such as Lord Westbury when we happen to get him.'[1] Yet, in our usual piecemeal fashion, the work of consolidation is spreading from one branch of the law to another;[2] and should a Justinian or a Napoleon be raised up among us, he will find that his task has been freed from many of the difficulties which baffled the Victorian Chancellors.

Westbury was generally the first of the Law Lords to put in an appearance at Westminster, and in Brougham's language he would 'catch a Bishop' to complete the modest quorum of three which is required to 'make a House' in the gilded chamber. Sometimes he would find himself with no company but the bishop on whom the duties of chaplain had devolved, and if that prelate was possessed of companionable qualities some of the pleasantest half-hours of his life were spent with the erstwhile *malleus clericorum* who, like Giant Pope, was now getting stiff in his joints.[3] But Lord Westbury's attendance in the House of Lords was by no means confined to the judicial business, and he developed into one of the most effective critics of Mr. Gladstone's Administration.

[1] *Life of Sir James Stephen*, 225. [2] *Vide infra*, 461.

[3] For bishops in the abstract he still retained his old dislike. In promising Bishop Wilberforce his support for a Bill enabling the clergy to resign their benefices when incapacitated by age or infirmity he took exception to the phrase, 'diseases of the mind.' In the first place, he contended, there could be no such thing as disease *of the mind*, and secondly he had never yet met a clergyman 'with the exception of your Lordship' who had a mind (*Life of Wilberforce*, iii. 340).

On the latter's accession to office in December 1868, Lord Westbury was still regarded as a possible candidate for the Great Seal,[1] but, other considerations apart, he was as little in sympathy, politically, with his old colleagues as with the new blood infused into the Cabinet. The question of the hour was the Irish Church. In the last Parliament he had voted, not without qualms, for the Suspensory Bill. Disestablishment he was prepared to accept, though in true Erastian spirit he disliked the loosening of the Queen's supremacy over the clergy. But to strip the Irish Church of its revenues and to treat it as a delinquent corporation was another matter. And he had formed an opinion that the threefold offer of a disestablished Church, a Land Bill, and a Roman Catholic University would awake the craving, quiescent since the collapse of O'Connell, for repeal of the Union.

It is somewhat strange to find him a vehement advocate for the 'concurrent endowment' out of the revenues of the Irish Church, of Catholic and Protestant alike. And his sentiments in the debate over the Bill for the abolition of Religious Tests in the Universities, though reminiscent of the famous Wolverhampton address,[2] have a piquancy of their own.

> I am an old man, my Lords, and I am more and more convinced every day that education, to be worthy of the name of education, must be based upon religion and morality.[3]

But his most conspicuous excursion into the domain of general politics was over the Treaty of Washington which paved the way to the Geneva Arbitration. He had no love for the victorious North,[4] he thought the tone of the

[1] Lord Selborne, *Memorials, Personal and Political*, i. 112.

[2] *Vide supra*, 243.

[3] I quote the sentence as I have heard it from the lips of a spiritual peer who was present, but Hansard, ccvi. 376 (May 8, 1871), condenses the phrase into the somewhat bald remark, 'I quite concur with the noble Marquess in the opinion that the foundation of all teaching should be the sanction of religion.'

[4] Sir Rowland Blennerhassett, without giving his authority, has written (in the *Outlook*, Nov. 11, 1905) that the three sympathisers

British Government unnecessarily apologetic, and in the revival of the 'Indirect Claims' which were supposed to have been formally abandoned he saw a piece of downright sharp practice. To him belongs the credit of having been the first person to press upon the Cabinet the necessity of acting with decision and promptitude in a crisis which threatened to saddle us with a sum exceeding the whole total of the national debt.[1] On January 7, 1872, he wrote to Lord Granville, who was now Foreign Secretary, urging him to refuse to treat these claims as matters of discussion before the Arbitrators, and his letter was duly submitted to Mr. Gladstone, to Lord Hatherley, and to Sir Roundell Palmer.[2] He watched the proceedings at Geneva and the attitude of Ministers at home with equal distrust and apprehension, and by the pertinacity of his questions and speeches in the House of Lords he finally exhausted the patience of Lord Granville, who begged him to have done with his nagging and bring forward a formal vote of censure. This, however, he was not prepared to do, and when Lord Russell moved on June 3 to suspend the Arbitration until the indirect claims had been withdrawn, a proposal which the Ministers treated as one of non-confidence, he made in their support what was destined to be his last speech in Parliament.[3] It was a support, however, with which the donees would have willingly dispensed.

Lord Westbury, wrote Lord Blachford,[4] spoke from a false position. Of course he was clear, flowing, and amusing now and then, but the amusement was principally from a sense of the absurd insolence with which he managed to convey his contempt for the Ministers[5] and all their helpers;

with the Confederate cause in Palmerston's Cabinet were Westbury, Gladstone, and Earl Russell.

[1] See Lord Selborne, *Memorials, Personal and Political*, i. 231; *Life of Lord Westbury*, ii. 239; *Life of Lord Granville*, ii. 86.

[2] *Vide infra*, 408.

[3] Hansard, ccxi. 1157 (June 4, 1872). [4] *Letters*, 341.

[5] This is the way in which he allowed himself to speak of one of the ablest debaters on the Ministerial Benches and a former colleague

and he was in this difficulty, that he was desirous, or affected to be so, of preventing the adverse vote, while he was equally desirous to intensify the feeling of dissatisfaction with Ministers which justified (if anything could justify) the vote; hence he had so to distribute his arguments as to serve both purposes, and did not make a consistent whole.

For some little time past Lord Westbury's health had been failing. Rheumatism and neuralgia had become chronic, and at last his illness was diagnosed as a deep-seated inflammation of the coating of the upper vertebræ of the neck, which could only have one termination, and involved constant and agonising pain. When the final verdict was announced to him he was immersed in public duty, and he had only recently been married to the daughter of one of his oldest barrister friends.[1]

By a private Act of Parliament he had been appointed arbitrator, with an honorarium of 3,000 guineas, to wind up the affairs, and settle the conflicting claims arising out of the insolvency of the European Assurance Society. In his own words the arbitration was an anomaly only to be justified by its necessity, 'and its necessity is a great reproach to the judicial institutions of the country.' The labour was enormous, involving most complicated questions of law and fact and liability, and it tested to the fullest measure that power of getting to the bottom of confused and fraudulent transactions which had been one of his greatest gifts at the Bar. The misery caused

of his own in Palmerston's Cabinet. 'I perceive the noble Duke is not listening—indeed I perceive that the noble Duke is asleep. The subject before your Lordships is an intricate one, I admit, but if the noble Duke will lend me his attention I do not despair of making the matter clear even to his intellect.' The words are not to be found in Hansard, but I have them from the lips of the same spiritual peer to whom I have already made reference. Like most of Lord Westbury's sarcasms, they lose their savour when deprived of his comical intonation and measured syllabic flow.

[1] Miss Tennant, daughter of Henry Tennant, Esq., of Cadoxton, in Glamorganshire. The marriage took place January 25, 1873. The first Lady Westbury had died in March 1863.

by the insolvency of the 'European' was widespread and appalling, and there was much in the conduct of some of the chief actors to rouse the arbitrator's deepest indignation.

I do not care a rush, he broke out, whether the directors did their duty or not. The question is whether devices for escaping liability which anyone can see through are to enable outgoing shareholders to fill the company with rotten bankrupt people to the ruin of unfortunate creditors.[1]

Throughout the whole of the proceedings, which were protracted over many months, and even when the pains of death were unmistakably getting hold of him, his high judicial qualities never failed, 'his rapidity of apprehension, his logical acumen, and his uniform courtesy of manner' were the admiration of the counsel employed before him.[2] Eventually the arbitration was removed from Victoria Street to his dining-room in Lancaster Gate, and he was only able to get through the final sitting by the application to the top of the spine of a bag of ice which was constantly renewed. He bore it all with more than Roman fortitude, and none save the grandson who was standing behind the chair had any conception that they were in the presence of a dying and tortured man.[3]

The end came, gratefully and peacefully, in the early morning of Sunday, July 20. Just twelve hours earlier 'the slip of a sure-footed steed on a faultless road'[4] had cut short the earthly career of his great adversary, Samuel Wilberforce, in the plenitude of physical strength and intellectual vigour. As Mr. Traill has put it in

[1] *Life of Lord Westbury*, ii. 254.

[2] See a letter of Mr. Crackanthorpe (then Montague Cookson), K.C., in the *Times* of July 21, 1873.

[3] *Life of Lord Westbury*, ii. 253. A friend of mine who was present as a young solicitor during nearly all the arbitration has told me that latterly Westbury's voice sank so low that the reporter had to sit almost in his pocket.

[4] From a sermon preached by Archbishop Benson at Wellington College, Sunday, July 27, 1873.

language most congenial to the classical mind of the old Oxford scholar, their obols clinked together in Charon's pouch.[1] On the following Sunday, Dean Stanley improved the occasion in the Abbey from the text, 'How are the mighty fallen!'

Both during his lifetime and after his death, Lord Westbury has received somewhat hard measure. His failings were conspicuous and transparent, his better qualities and finer nature he kept scrupulously hid. Mr. Nash has shown him to us as he was in the domestic circle, simple and affectionate to his children and friends, doing kind actions by stealth, studious of the comfort and enjoyment of others and pushing indulgence to a fault. The portrayal is confirmed by some who knew him well and were by no means blind to his failings, by Lord Granville, by Lord Selborne, and by Mr. Henry Reeve.[2] He was a man, says the latter,

> whose bitter tongue made him many enemies and procured for him a reputation as of one without respect or regard for aught human or divine. Those who knew him well told a different tale. He did not make many professions, but had the good of his fellow-creatures at heart. He always found time to give advice and help.[3]

He was undoubtedly capable of strong attachment both to human beings and to institutions, to his country, to his University, to his college. I feel dubious whether he was or was not indulging in paradox when he told a Royal Commission that the strongest of all a man's attachments was that to his Inn of Court.

None the less I am driven to agree with Mr. Herbert Paul[4] that in the case of Lord Westbury, as in that of many others, charity began and ended at home, and

[1] *The New Lucian*, i.

[2] To these I would add Mr. Frederic Harrison and the late Professor Jowett.

[3] *Reminiscences of Henry Reeve*, ii. 217. The author speaks in another passage of 'the inexhaustible kindness of his heart.'

[4] *History of Modern England*, ii. 376.

it is irresistibly borne in upon the student of his life and actions, that he was from start to finish strangely deficient in the moral sense, that he had little to guide him 'except a by no means infallible perception of what was immediately expedient.' The finest trait in his character is the fortitude and absence of resentment which he displayed in moments of the most intense mental and physical anguish. And he is most amply justified in the claim which he put forward in a letter to his oldest friend at the time of his elevation to the Woolsack :

From my youth up I have truckled to no man, sought no man's favour, and, both at the Bar and in politics, have been independent even to a fault.[1]

[1] *Life of Lord Westbury*, ii. 7.

CHAPTER XIV

LIFE OF LORD CAIRNS DOWN TO HIS SECOND CHANCELLORSHIP

1819–1874

HUGH MCCALMONT CAIRNS was an Ulsterman whose forbears had migrated from the Stewartry of Kirkcudbright to the north of Ireland at the time of the 'plantation' in the reign of James I. They had taken root in the soil of their adopted country, had survived the various vicissitudes of the seventeenth century, had fought in Marlborough's wars, and had represented Belfast in the Irish Parliament. Some few years after the Union the head of the family, William Cairns of Cultra, county Down, formerly a captain in the 47th Foot, was married to the daughter of Hugh Johnson, Esq., and the subject of this memoir was their second son.

Born on December 27, 1819, at Belfast, he received his early education at the Academy of that town, and in his early years was accounted somewhat of a prodigy. At the age of eight, decked out in velvet tunic and large lace cuffs, after the fashion of the time, he was carried in a sedan chair to the town hall for the purpose of delivering a lecture on chemistry. And the task is said to have been accomplished by the little boy 'with so much ability, modesty, and self-possession as to win the surprised admiration of his whole audience.'[1] It reads like a suppressed episode in the life of Lord Brougham, but the only other recorded incident of his boyhood is

[1] *The First Earl Cairns*, 5.

not so much in keeping with the feats of that microcosm of learning. Before Cairns was eleven years old, we are told on the same authority,[1] he wrote articles for the 'Church Missionary Gleaner,' and a treatise by him in that magazine on the 14th Psalm was considered to be remarkable for its insight into the meaning of the verses. Here indeed the boy was father of the man.

From the Belfast Academy he proceeded in his sixteenth year to Trinity College, Dublin, and he graduated B.A. in 1838 with a first class in classics and other distinctions; he was deterred from competing for a Fellowship by the necessity for offering mathematics; it would have cost him too much time to have attained the requisite proficiency. Included among his undergraduate studies was Hebrew, and, though he discontinued it on leaving college, he was able quite late in life to repeat more than one of the Psalms in their original language.

He had indeed been destined for Holy Orders, but his tutor, the Rev. George Wheeler, who had numbered several distinguished lawyers among his pupils,[2] persuaded Mr. Cairns to send his promising son to the Bar. This was entirely in accordance with the wishes of the latter; he was duly admitted at Lincoln's Inn on January 14, 1841, and took up his residence in London to study pleading with Chitty, and to acquire a knowledge of equity and real property law by 'labouring in the abstract' with Malins. One of his sisters was married to her cousin, Mr. McCalmont, a wealthy and generous relative whose purse was to prove of substantial assistance to the future Lord Chancellor at more than one crisis in his career. Their house was in Eaton Square, and Cairns made his residence with them. In those early Victorian days what is now Eaton Terrace was covered by a wood in which nightingales abounded, and the young

[1] *The First Earl Cairns, loc. cit.*

[2] *E.g.* Mr. Justice Willes, Chief Justice Fitzgibbon, Baron Palles, and the Right Honourable Hugh Law.

man, who had accustomed himself to rise at four in the morning, 'found his studies not a little helped by the chorus of song birds.'[1]

He was called in January 1844 from the Middle Temple whither he had migrated while retaining his membership of Lincoln's Inn. His original intention had been to practise at the Irish Bar, but from this course he was dissuaded by Malins, who, in after years, as Vice-Chancellor, 'dispensed a home-brewed equity of his own.'[2] Cairns began without any 'connection' whatsoever, and his first start entitles him to be regarded as a standing example of the industrious apprentice.

In accordance with that time-honoured precept which has brought so much disappointment to less fortunate youths, he had made it his rule never to be absent from chambers during business hours. One Saturday when he had been invited to join a water party, at which legend has it that the future Lady Cairns was to be present, he explained that duty required him to remain in New Square till four o'clock. There were no 'papers' requiring his attention, and the courts rose at two, but he was adamant to pressure and ridicule. As he was closing his books about five minutes to the hour there came a rap at the door. A member of an influential firm of solicitors had been drawing Lincoln's Inn without success; their regular counsel had risen and oak after oak was found 'sported.' The matter brooked no delay, and application was made in despair to the first gentleman whose door was not locked.[3] Fortunately for both parties, the solicitor, Mr. Gregory of Bedford Row, lighted upon one who was more than equal to the task; and the mastery of his business which Cairns displayed upon this occasion gained him a client for life. In a short space of time his fame had spread and he had as much work as he could accomplish; he was soon able to relax the

[1] *The First Earl Cairns*, 9.
[2] Manson, *The Builders of our Law*, 203.
[3] *The First Earl Cairns*, 9.

Saturday rule, and, in after years, when the strain of practice was threatening his health, he always, under medical advice, took this day as a holiday, devoting it during the winter to hunting.

The story of his progress would be little more than a repetition of what I have had to write of so many others. Years of intense study had qualified him for the part he was called upon to play, but he owed his success to the native vigour of his understanding and his power of accurate speech, quite as much as to wide reading or an exhaustive knowledge of case law. He has been described by the late Mr. Hemming, Q.C., as 'an advocate without guile,' who had nothing to unlearn when he reached the Bench. 'He could be subtle enough when refined distinctions were called for, but no one ever knew him to condescend to the crafty and evasive ingenuity of the mere tactician.' [1]

No one could be brought in contact with him and fail to be impressed with his grasp and capacity. While still an obscure junior he was briefed in a case with Bethell, then at the height of his fame in Lincoln's Inn. 'That young man,' said the leader to the solicitor, after the consultation, 'will undoubtedly rise to the top of his profession.' Cairns, indeed, was one of those master spirits over whom circumstance seems to have no power, and whose ultimate pre-eminence is beyond the possibility of doubt. In no way did he show the quiet firmness of his character more strongly than in the tenacity with which he refused to allow his profession to encroach upon the Sabbath.[2] On this ground, quite at the beginning of his career, he refused a heavy brief from an important client. 'Six days a week,' he said, 'I am your man; on the seventh I am God's man only.' [3]

[1] *Law Quarterly*, i. 367.

[2] Lord Justice Lush, I believe, made a similar rule when at the Bar.

[3] *The First Earl Cairns*, 12. From his youth down to the very close of his life he taught regularly in the Sunday school, and indignantly repelled the idea that his elevation to the peerage and the Woolsack could interfere with this practice.

It was just twelve years after his call that in 1856 he received a silk gown from Lord Cranworth, and was enabled to devote himself exclusively to advocacy. It was here that his true strength lay, though he used to relate that on his first appearances in Court he suffered so much from nervousness that he had almost decided to confine himself to chamber practice. He was soon ranked with Palmer and Rolt in the first three who stood next, in the eyes of the Equity Bar, to the unchallenged throne of Bethell. And fortune was befriending him in other ways. In July 1852, while still a stuff gownsman and only in his thirty-third year, he was elected member for Belfast, winning back from the Liberals a seat that had been lost in 1847. He sat for the Ulster capital during the whole of his time in the House of Commons, a commanding position for a young man who, though Irish by birth, had elected to follow his profession on the other side of St. George's Channel.

For some few years his name appears only now and then in Hansard, but his light could not be hid altogether under a bushel. In his first session he spoke on Gladstone's famous Budget of 1853, on the Merchant Shipping Bill, and on the law of partnership and of limited liability; Cardwell, then President of the Board of Trade, complimented him on the conspicuous ability with which he always conducted the business in which he took part. And when Lord Derby's turn came in March 1858, Mr. Cairns enjoyed the advantage of being in possession of the ground. The stream of Tory lawyers had been gradually running dry since the Whig predominance had become more and more clearly marked. So powerful a recruit as the honourable and learned member for Belfast was not to be neglected, and though comparatively unknown outside the profession, he was offered the post of Solicitor-General, Sir Fitzroy Kelly being the Attorney.

From that date until his death Sir Hugh Cairns was one of the chief assets of the Conservative party, and,

but for his precarious health, he might have aspired to lead it. In him, as it has been well written, 'the shrewd sense and grim persistency of Scotland was combined with the keen partisanship of the Irish Orangeman.' Utterly removed from the Toryism of the Eldon school, and with small esteem for things and institutions merely because of their age, he was one of those men for whom the term Conservative seems to have been specially invented. Yet, cautious and unemotional as he might appear on ordinary occasions, he could flash out when the national interests or the national honour seemed to him endangered. He was wise in council as he was eloquent in the Senate, nor did he ever incur the imputation of insincerity, which is the common fate of Parliamentary lawyers. He had first ranged himself under Lord Derby's banner at a moment when that statesman seemed to have reached his nadir. He was an Ulsterman of a type which is by no means extinct, and no one who listened to him or watched him could have doubted that he was terribly in earnest.

He had not long to wait before vindicating the justice of his preferment. The premature publication of Lord Ellenborough's despatch, in which the President of the Board of Control violently censured the Oude proclamation of Lord Canning, had produced something akin to consternation in the Ministerial ranks.[1] And on May 14 Mr. Cardwell moved a vote of censure, nominally upon Lord Ellenborough, who had already resigned, in reality upon the Government. The Solicitor-General was put up to answer him. 'Cairns made against you,' wrote Lord Granville to Lord Canning, 'one of the best speeches ever made in the House of Commons,'[2] and the motion was withdrawn by its proposer to avert a formidable schism in his party.[3] Cairns' oratory changed

[1] *Annual Register for 1858*, 251–253; *Life of Lord Granville*, i. 303 *et seq*; Malleson's *History of the Mutiny*, iii. 254.

[2] *Life of Lord Granville*, i. 307. Hansard, cl. 693.

[3] It was over this debate that Disraeli used his famous simile of the Calabrian earthquake. 'There was a rumbling murmur, a groan,

little with the course of time, and I venture to illustrate here from a letter, written fourteen years later, the impression which was wont to be created on his opponents by his intervention in debate.

His speeches are very like one another, and very unpleasant for those against whom they are directed, from their extreme excellence of arrangement and terrible lucidity. It seems as if you had never done with him. He makes a case against you—a clear incisive case—and then when that is worked out, and you are thinking how to get out of the scrape, you begin to find that what you have heard is not the scrape but only the beginning of it; the foundation of a series of aggravations and misfortunes which sink you deeper in the mire and close all avenues of escape. Yet through all this there is a feeling that there is a fallacy here and an exaggeration (not of language, but of thought) there; and that with time and power and liberty to write a book on the subject a tolerably good book might be made of 'the dissector dissected.' You feel that it is a skilful accumulation of all that is bad and a skilful exclusion of all that is good which really places the affair, as a whole, on the most utterly false footing. However, he is very unpleasant to his adversaries, and his *sentiment*, when he tries it, is neat bunkum.[1]

In regard to this last sentence it should be remembered that the debate to which Lord Blachford refers was concerned with the Alabama claims,[2] and that his Lordship was strictly of the following of Gladstone.

Sir Hugh Cairns held the office of Solicitor-General rather more than fifteen months, and he showed his interest in the practical work of law reform by introducing, in the course of 1859, a Bill for the simplification of title and another for the establishment of a land

a shriek, a sound of distant thunder. No one knew whether it came from the top or the bottom of the House. There was a rent, a fissure in the ground, and then a village disappeared, then a tall tower toppled down, and the whole of the Opposition benches became one great dissolving view of anarchy' (Molesworth, *Hist. of England*, iii. 125).

[1] *Letters of Lord Blachford*, 341.

[2] June 5, 1872, *vide infra*, 407.

SIR HUGH McCALMONT CAIRNS, Q.C., SOLICITOR-GENERAL

From a photograph

registry. In the previous year he had succeeded in setting up in Ireland a Landed Estates Court to carry out the work of the Encumbered Estates Act, and he now sought to apply to England and Wales that part of the Irish system which enabled the Court to confer an indefeasible title. Both Bills were swept away in Lord Derby's overthrow, but the speeches in which Cairns introduced them gave convincing proof of his capacity for constructive legislation.

In an evil hour for themselves the Ministry tried their hand upon a Reform Bill, and they were defeated by a majority of thirty-nine. Once again the Solicitor-General covered himself with glory. Writing his official letter to the Queen on March 22, 1859, Disraeli spoke of Sir Hugh Cairns in glowing terms as putting forward a vindication of the Government Bill which charmed everyone by its lucidity and controlled everyone by its logic.[1] A general election followed, and on June 11 Lord Hartington's vote of censure was carried by a narrow majority. Lord Derby resigned and Cairns went back to his sheepfolds in Lincoln's Inn. The short term of office had placed him head and shoulders above the other Conservative lawyers as a Parliament man. Next to Disraeli he was the most effective debater on his side of the House, while Lord Chelmsford, in his new sphere, had disappointed the expectations of the statesman who had placed him so unexpectedly on the Woolsack. Given health and another swing of the pendulum, and there could be little doubt as to who was the Conservative Chancellor of the future.

Meanwhile there were before him seven years in the cold shades of Opposition, years of enormous activity at the Bar and increasing reputation in the House of Commons. He was largely retained in Scotch and Irish appeals to the House of Lords, and in ecclesiastical cases in the Privy Council. It will be remembered that

[1] Sir Theodore Martin's *Life of the Prince Consort*, iv. 411. Hansard, cliii. 599.

Archbishop Longley and Bishop Wilberforce relied upon his advice as to the powers of Convocation before they embarked upon the synodal condemnation of 'Essays and Reviews.'[1] And he opposed Bethell, though without success, on behalf of the Warden and the senior Fellows of All Souls'. On this occasion he indulged in a remarkable argument against the principle of competitive examinations, and the assumption that intellectual merit when ascertained must prevail over merit of every other kind.

No doubt it was a generous and, to some extent, a laudable sentiment which led young men, in the ardour of youth, to attach such weight to intellectual merit; but he had no doubt that reflection and a little more experience of the world would teach the petitioners that there were other considerations which, *especially in a society of this kind*,[2] were deserving of attention. It had been well said that possession of the tree of knowledge did not always give possession of the tree of life.

On more than one occasion he was taken before a special jury, and in the case of the 'Alexandra,' tried before Sir Frederick Pollock in the Court of Exchequer, he obtained a verdict against the Crown on behalf of the Liverpool shipbuilders, Messrs. Fawcett, Preston and Co. In this feat he was considerably assisted by the advocacy of Mr. (afterwards Lord Justice) Mellish and by the strong view taken by the Lord Chief Baron.[3] As a consequence, though not without further struggles in the Exchequer Chamber, and in the House of Lords, the 'Alexandra' was released from arrest and enabled to take her place in the Confederate Navy. And in the House of Commons Sir Hugh Cairns joined with other opponents of the Government in representing his clients as the victims

[1] *Supra*, 267.

[2] The italics, of course, are mine. This qualification seems to me a bad slip from the point of view of advocacy. He had better have stuck to the broad proposition.

[3] Lord Selborne, *Memorials, Family and Personal*, ii. 440 *et seq.*

of a gross straining of the Foreign Enlistment Act.[1]

His greatest speech before a jury was made in the course of the inquiry into the sanity of Mr. William Frederick Windham, of Felbrigg Hall, Norfolk, nephew of 'Redan' Windham and great-great-nephew of the statesman, a riotous, unrestrained, and untutored youth who was dissipating a fine fortune in chambering and wantonness. The inquiry lasted for thirty-four days, from December 16, 1861, to January 31, 1862. It was presided over by Samuel Warren, Q.C., himself hardly less eccentric in his vanity than Windham in his vices: 'The eyes of England,' he told an admirer, 'are following my pen.' Cairns, with Mr. (afterwards Sir John) Karslake, appeared for the alleged lunatic, and a certain Mr. Charles Russell, who had recently been called to the English Bar, watched the case for Mr. Windham's mother, Lady Sophia Elizabeth Giubelei. Another of the counsel engaged, Mr. John Duke Coleridge, Q.C., fresh in the honours of a silk gown, wrote to his father, the judge:

> I hope you read Cairns. It was too minute and elaborate, but it was very complete and clear, and the conclusion, though not sufficiently blended with the preceding matter, was in itself very striking and even beautiful.

The peroration is a specimen of what Cairns might have accomplished at Nisi Prius had he devoted himself less exclusively to the Chancery Courts:

> My client is indeed, gentlemen, an unfortunate man. Other men have passed their youth in excess, in riot, in debauchery. They have purchased by an expenditure of health and property a conviction of their folly, and they have settled down into active, useful, if not brilliant, members of society. Other men have had youthful vices and immoralities over which the kind hands of friends and relatives

[1] Hansard, clxx. 718, 750. See also *ibid.* clxxiii. 987 and clxxiv. 1890, for his attack on the Ministry and their legal advisers over the detention of the steam rams, which were eventually purchased from Messrs. Laird on behalf of the Admiralty.

have gently and tenderly drawn the veil of concealment and oblivion. Mr. Windham has been received on his entrance into public life by a panoramic view unfolded by his relatives to the public eye in which have been portrayed, not the events of his life, but all such isolated acts as ingenuity or perversion could twist into the appearance of that which is hideous and obscene. And what is the object for which this has been done? That a young man, the heir to a considerable property and to an illustrious name, who from his boyhood upwards has gone out and come in, who has acted and been treated by all about him as capable and sane, with whom his relatives have dealt and bargained and negotiated upon a footing of perfect equality, who has been deliberately allowed by them to go out into the world and to enter into contracts, including among them the most momentous contract of life, should now be adjudged incapable of taking care of himself in order that his persecutors should be authorised to administer his estate. In one of the books which Mr. Windham used to read at Eton there is a story told of a tyrant in ancient days who invented for his prisoners the terrible torture of chaining a living man to a lifeless body, leaving the living to die and both to decompose together:

> Mortua quin etiam jungebat corpora vivis,
> Componens manibusque manus atque oribus ora,
> Tormenti genus, et sanie taboque fluentes
> Complexu in misero, longa sic morte necabat.[1]

That, in truth, was a melancholy and terrible fate; but I own that seems to me a severer punishment and a more cruel, because a more exquisite and enduring torture, which would consign a warm and living soul, with all its sensibilities and affections, with all its hopes and aspirations, with all its powers of enjoying life and everything that makes life valuable, to the icy and corpse-like embrace of legal incapacity and lunatic restraint.

The jury were convinced, and Mr. Windham was allowed to continue his career of reckless profligacies. The inquiry was only a skirmish in the sempiternal warfare which law and medicine wage over the definition of insanity. But the scandal helped Lord Westbury to carry his Lunacy Bill of 1863.

[1] *Æneid*, viii. 485.

In spite of these alarums and excursions, Cairns held steadily to his proper sphere—Chancery and the House of Lords. There he was thoroughly at home. There, in the words of an admirable critic, Mr. Bryce,[1]

> he was broad, massive, convincing, with a robust urgency of logic which seemed to grasp and fix you, so that while he spoke you could fancy no conclusion possible save that towards which he moved. His habit was to seize upon what he deemed the central and vital point of the case, throwing the whole force of his argument upon that one point and holding the judge's mind fast to it.

During these years Cairns's position on the front Opposition bench had become firmly assured. The debating power of parliamentary Liberalism has never been greater than in the years preceding the Reform Bill of 1867. Palmerston, Gladstone, Bright, Cobden, Lowe, Roundell Palmer, to mention only half a dozen names, towered over against a party which still drew its main forces from the broad-acred squires, and in whose body politic the wounds of the great disruption of 1846 had never been completely healed. In their ranks this calm, unimpassioned lawyer from Ulster, with his remorseless logic, his complete command of language, and the imponderable strength of a great personality, was indeed a very present help in trouble. He was not only among the highest authorities in the House on purely legal questions, but his general knowledge of public affairs was wide and exact, and his speeches breathe the genius of one whose natural bent was for statesmanship quite as much as for law. Whether discussing the clauses of a Bankruptcy or a Land Registration Bill,[2] whether criticising the details of a commercial treaty or denouncing some palpable sham in the shape of a

[1] *Biographical Studies*, 191.

[2] Palmerston once defined his programme for the session as 'a little bankruptcy.' Cairns subjected Lord Westbury's Registration Bill to severe criticism, but accepted it as a step on the way to his own ideal.

Parliamentary Reform Bill,[1] he seemed equally at home and equally secure in his hold upon an assembly which is morbidly quick to resent the readiness of the professional advocate.

As became the member for an Orange stronghold, and himself a Protestant of the Protestants, Cairns was a most vigilant and effective champion of the Irish Establishment. When Bernal Osborne moved, on June 29, 1863, for a commission to inquire into the revenues of the Irish Church, he administered a signal castigation to that licensed jester,[2] and a couple of years later he strongly opposed the modification of the parliamentary oath imposed upon Roman Catholic members on the ground that it was calculated to remove a stumbling-block from the feet of the Disestablishers.[3] He took a leading part in the debates which arose out of the Belfast riots of 1864, and he animadverted in strong language upon the general paralysis of the Irish executive and the misdirected energies of General Sir George Brown.[4]

He could employ a frigid and syllogistic sarcasm when he chose, of which the following, addressed to Mr. Milner Gibson, may serve as a sample:

> The laws of England, which the President of the Board of Trade says he does not understand, he nevertheless maintains have been violated; the common sense which does not enable him to understand the laws of England does enable him to say that these parties had entered into a deliberate course of violating them.[5]

In the same debate occurs the nearest approach to an

[1] Hansard, clvii. 164; clix. 102. [2] Hansard, clxxi. 1699.

[3] Hansard, clxxix. 1087. This was the oath created by the Emancipation Act as one of the 'Securities' (*ante*, i. 46 *n.*). It contained an undertaking not to attempt in any way 'to subvert the present Church Establishment as settled by law or endeavour to disturb or weaken the Protestant religion or Protestant government of the country.'

[4] The fine old Peninsular and Crimean veteran who was the commander of the forces in Ireland; he retired and died in 1865.

[5] Hansard, clxxiii. 987.

Irish 'bull' that I have been able to detect in his most un-Hibernian oratory.

Oh, then that shake of the head is withdrawn; it is always dangerous to pin yourself to one horn of a dilemma until you have heard the other.

One of his neatest hits was the grave compliment to Earl Russell, then Foreign Secretary, on 'his unrivalled capacity for putting everything into despatches which ought not to be there.' His last speech in the dying Parliament was made on June 30, 1865, when he pleaded that active and immediate steps should be taken on behalf of the British subjects imprisoned in Abyssinia.[1] The Government was none too sympathetic, and Mr. Layard, the Under-Secretary for Foreign Affairs, had the almost inconceivable maladroitness to refer to the shameful desertion of Stoddart and Conolly as a precedent for non-intervention, at a date when the 'bug-hole' and the shambles of Bokhara must have been vividly in the recollection of most of his audience.

The general election resulted in an increase of the Ministerial majority, but it was Palmerstonian rather than Liberal, and ill-inclined to welcome the Reform Bill with which the new Prime Minister elected to open the session. Sir Hugh Cairns joined in the attack upon this unfortunate measure, showing himself, in the judgment of Mr. Bryce, the clearest and most vigorous thinker among the opponents of reform,[2] 'more solid, if less brilliant, than was Robert Lowe'; but the Conservative tactics were obviously to leave the burden and heat of the conflict to the Adullamites. On June 18 the *coup de grâce* was administered, and a day or two later Lord Derby formed his third and last Administration. Even if Sir Fitzroy Kelly had not availed himself of Chief Baron Pollock's prompt retirement from the Court of Exchequer,

[1] Hansard, clxxx. 992. The successful expedition to what Mr. Disraeli chose to call 'the mountains of Rasselas,' was undertaken by the Conservatives in 1867.

[2] *Biographical Studies*, 188.

it would have been difficult to ignore the right of Cairns to the post of Attorney-General. And, at the age of forty-seven, an Irishman and an Irish member, he found himself the head of the English Bar, entrusted with an office which never before had been filled by anyone not a native of Great Britain.

It would have occasioned small surprise had Sir Hugh gone *per saltum* to the Woolsack; the general reason assigned was the unwillingness of the Cabinet to lose his services in the House of Commons. If so, the fates were against them; four months sufficed to teach the Attorney-General that his health was unequal to the strain of the 'painfullest place in the kingdom.'[1] The resignation of Lord Justice Knight Bruce at the close of the Long Vacation made a vacancy in the Chancery Appeal Court, and Cairns grasped the opportunity of a dignified relief from his burden. It was an enormous sacrifice, for it involved the loss of at least two-thirds of his professional income, and nothing but the most urgent necessity could have compelled him to it. From boyhood he had been subject to weakness of the chest and lungs and to constant attacks of asthma, and the stately presence and well-knit frame concealed an organisation delicate and highly strung. For many years past he had refused all briefs on Saturdays, and had sought as much outdoor recreation in the hunting-field and on the Scotch moors as was compatible with his vast practice. But there was one direction in which he could never be induced to spare himself: however late the House of Commons might have sat, however arduous the day's work before him at the Bar, 'he rose every morning at six o'clock to secure an hour and a half for the study of the Bible and for prayer before conducting family worship at a quarter to eight.'[2]

[1] Bacon applies the phrase to the Solicitor-General's post, but there can be little dispute as to which is the harder.

[2] *The First Earl Cairns*, 17. Even when it left him only two hours for his night's rest 'this determination to allow nothing to come between him and communion with his God prevailed.'

The appointment to the Bench was accompanied by the offer of a peerage, but the new Lord Justice did not consider that his means justified him in saddling his family with hereditary rank;[1] the period of his great prosperity at the Bar had been too short. The generosity, however, of his millionaire brother-in-law overcame this obstacle, and in the following February he took his seat in the Upper Chamber as Baron Cairns of Garmoyle, County Antrim, having previously been sworn of the Privy Council.

His term of office as a Lord Justice extended over barely eighteen months, from October 1866 to February 1868,[2] and, save by students of the Law Reports, it is an almost forgotten episode. It was while sitting in the Court of Appeal that he first established his judicial reputation; but for the moment we are concerned with him as a politician rather than as a lawyer. Following the dubious precedent of Chief Baron Lyndhurst, he threw himself into the forefront of the parliamentary fray, and during the session of 1867 he played a leading part in the discussion of Disraeli'sFranchise Bill.

This measure was no more palatable to him than to the rest of the party, who were undergoing 'education.' Cairns gave a general independent support to the Government, but his suggestions were not always accepted by the Conservative leaders, however consonant they may

[1] In May 1856 he had married Mary Harriet, eldest daughter of Mr. John McNeile of Parkmount, County Antrim, a place which had originally belonged to Cairns' father; and four sons and two daughters had been born to him. Lady Cairns was the niece of the eloquent Evangelical preacher, Dr. Hugh McNeile of Liverpool, afterwards appointed to the Deanery of Ripon when his nephew was on the Woolsack. His memory has been preserved by a passage in that Maynooth speech which cost Macaulay his Edinburgh election. 'The Orangeman raises his war-whoop; Exeter Hall sets up its bray; Mr. McNeile shudders to see more costly cheer than ever provided for the priests of Baal at the table of the Queen; and the Protestant operatives of Dublin call for impeachment in exceedingly bad English' (*Writings and Speeches*, 688).

[2] When he was out of office in 1869 he was invited by Lord Hatherley to resume his seat in the Appeal Court, but he declined.

have been with their secret convictions. On July 29 he carried an amendment against Lord Malmesbury, who was in temporary charge of the Bill, by which the lodger qualification was raised from 10*l.* to 15*l.* But the return to the scene of Lord Derby, and his insistence that the 10*l.* limit was the result of a compromise by which the Conservatives were bound in honour, induced him to permit the decision to be reversed.[1] He was more successful in his plan for safeguarding minorities in the 'three-cornered' constituencies, by restricting the elector to two votes. Though denounced by John Bright, the scheme was heartily welcomed by John Stuart Mill and the friends of proportional representation, and it survived until the general adoption of single-member seats in the Redistribution Act of 1884.[2] With parliamentary reform out of the way, for the time at any rate, the disestablishment of the Irish Church became a burning question, and that same year Lord Cairns struck the note of 'No Surrender' in a vigorous speech against Earl Russell's motion for a Royal Commission.

It was plain that the session of 1868 would be signalised by an attack all along the Ministerial line, and their debating weakness in the Upper House was accentuated by the sudden resignation to which the state of his health compelled Lord Derby on February 24. Neither Lord Malmesbury nor Lord Chelmsford was equal to the threatened encounter. How abruptly Disraeli cut the knot we have already seen.[3] Apart from all personal considerations, he had long since formed the highest estimate of the capacity and judgment of Lord

[1] Hansard, clxxxix. 310, 319, 826.

[2] On the whole the Liberal party were the chief gainers. They obtained a minority seat in Tory counties where they would have had small chance otherwise, and in great towns like Glasgow and Birmingham, where the electorate was overwhelmingly Liberal, a carefully planned organisation excluded their opponents from any share in the representation.

[3] *Supra*, 123.

Cairns.[1] His first overt act as Prime Minister was to offer him the Great Seal. The Lord Justice accepted without hesitation, though the want of ceremony and courtesy which had been displayed towards his predecessor robbed the preferment of much of its graciousness. Nor is it recorded in what spirit he took the jocular comment of 'Punch' that Disraeli had erected 'cairns' over Lord Chelmsford in honour of the latter.[2]

During the debates which ended in the rejection of the Irish Church Suspensory Bill the new occupant of the Woolsack displayed all his vigour and readiness.

Pale and emaciated, evidently very ill, but possessed by a spirit which no physical infirmities could overcome, he poured forth for hours an unbroken stream of clear and logical eloquence. Men who had known Hugh Cairns for a score of years were lost in admiration at the power which he now displayed and which so far surpassed all their previous experience of him.[3]

> Still when Cairns rises, tho' at dawn of day
> The sleepers wake and feel rejoiced to stay,
> As his clear reasonings in light strength arise,
> Like Doric shafts admitting lucent skies.[4]

Yet though the speeches by which Lord Cairns is known to the present generation were delivered in the House of Lords, his oratory, taken as a whole, did not produce the same effect in that dignified assembly which it had been wont to do in the less rarefied atmosphere of the Commons. Mr. Bryce suggests the explanation.[5]

[1] I have heard on good authority that during Cairns' term of office in the Court of Appeal, Disraeli used often to send the late Lord Rowton to consult him during the luncheon interval.

[2] The retirement of Lord Chelmsford brought up the number of living ex-Chancellors to five, Brougham, St. Leonards, Cranworth, Westbury, and himself. On the death of Lord Cairns there was not a single one, and the same state of things prevailed from the death of Lord Herschell to the resignation of Lord Halsbury.

[3] Quoted from the late Sir Wemyss Reid by Mr. Manson, *Builders of our Law*, 208. The speech was printed and widely circulated.

[4] Lord Lytton, *St. Stephen's*.

[5] *Biographical Studies*, 189.

The heat of that House warmed his somewhat chilly temperament and roused him to a more energetic and ardent style of speaking than was needed in the Upper Chamber, where he and his friends, commanding a large majority, had it all their own way. In the House of Commons he confronted a crowd of zealous adversaries, and put forth all the forces of his logic and rhetoric to overcome them. In the more languid House of Lords he was apt to be didactic, sometimes even prolix.[1] He over-proved his own case, without feeling the need which he would have felt in the Commons of overthrowing the case of the other side. Still he was a great speaker—greater as a speaker upon legal topics, where a power of exact statement and lucid exposition is required, than anyone he has left behind him.

In December 1868 he followed his party into retirement, and he assumed the formal leadership of the Opposition in the House of Lords. On June 14, 1869, the Bill for the disestablishment and disendowment of the Irish Church came on for second reading, having passed the Commons by a majority of 114. In that debate, where Bishop Magee made his maiden speech in a splendid blaze of fireworks and Geoffrey Earl of Derby lifted up his failing voice in protest against a measure 'the political impolicy of which is equalled only by its moral iniquity,'[2] Cairns contributed not the least effective defence of the Church in which he had been reared. The result, thanks to Episcopal and Conservative abstentions and secessions, was a foregone conclusion.[3] The second reading was carried by 179 votes to 146, but it was known that the real struggle would be in committee.

[1] 'When it was over Lord Granville came up to me and sat down and said, "Well, I congratulate you on your great success. We have been agreeing that you said in twenty minutes what it would have taken Cairns an hour and a half to say"' (*Letters of Lord Blachford*, 349).

[2] It was in this his last utterance in Parliament that Lord Derby used with pathetic effect the quotation from *Guy Mannering*, 'Ride your ways, Laird of Ellangowan; ride your ways, Godfrey Bertram. This day have ye quenched seven smoking hearths, see if the fire in your ain parlour burn the blither for that. Ye have riven the thatch off seven cottar houses; look if your ain roof-tree stand the faster.'

[3] Morley's *Gladstone*, i. 901.

How near the Bill came to shipwreck has been told over and over again, and there was a period when the leaders of the two parties seemed to have hardened their hearts and have set themselves down to a pitched constitutional battle. On July 20 Mr. Gladstone instructed his lieutenant in the House of Lords to throw up the Bill. Lord Granville confined himself to moving the adjournment of the debate, but the sands were running out.[1]

The next day saw no lessening of the tension, but on the morning of the 22nd Lord Granville received a note from Lord Cairns suggesting an interview and declaring that he was ready,

> as you know I have been throughout, to confer upon a mode by which, without sacrifice of principle or dignity upon either side, the remaining points of difficulty might be arranged.[2]

The struggle had, indeed, resolved itself into one for hard cash; the only 'principle' left, that of concurrent endowment, was distasteful to Ulster and to Scotland, and was mainly used by the Opposition to provoke collisions between Earl Russell and the Government. There were few members of the House of Lords who were more conscientiously opposed to Disestablishment than Lord Cairns; but he did not affect to misunderstand the verdict of the electorate, and he saw that the tide of national feeling was running strongly and more strongly against the Irish Church. Unless a speedy agreement were come to with the adversary, it was certain that a Bill of a far more confiscatory character would be pushed through in the following session.

To seize the precise psychological moment for striking a bargain is one of the attributes of a great advocate, and Cairns did his very best for his client. He had no time for a general consultation with his followers, but the conference which took place at the Colonial Office

[1] *Life of Lord Granville*, ii. 12 *n.*

[2] *Life of Lord Granville, loc. cit.*, and compare *Life of Archbishop Tait*, ii. 41.

was suspended for an hour or two to enable him to consult with Archbishop Tait and Lord Salisbury. Then, between four and five o'clock in the afternoon, he agreed to a compromise.[1] Terms of capitulation were arranged with the same calmness and mastery of detail that he had been wont to display in drafting the minutes of a Chancery order. But as the disputants shook hands upon the bargain Lord Granville could tell from the grasp, which trembled with nervousness, that his opponent had been stirred to the very depths.

It was a responsibility from which anyone endowed with less reserve of strength and with the instinct of the statesman less highly developed might well have shrunk. When Cairns walked across from the Colonial Office to the House of Lords it was by no means certain that he would prevail upon the Peers, some of whom had already shown signs of chafing under his leadership.[2] But he had a potent ally in Archbishop Tait, and his powers of exposition and persuasion carried the bulk of the party with him. There were many dissentients, however. The old Earl of Derby did not dissemble his indignation, and Bishop Magee, who had prayed that the Irish Church might be spared that 'most ignominious and agonising of all deaths, asphyxiation by lawyers,' wrote despairingly that the Church had been sacrificed to the Conservative party.[3]

On July 26 the Bill became law. On the 24th Cairns had circulated the following letter in lithograph to the noblemen who responded to the Opposition whip:[4]

MY LORD,

I am unwilling to rest upon my public statement the explanation of the course adopted by me on Thursday in reference to the Irish Church Bill; a course which was, and to those peers who have honoured me with their confidence

[1] *Life of Archbishop Tait*, ii. 42.

[2] See a letter from Sir Robert Phillimore in Morley's *Life of Gladstone*, i. 914.

[3] *Life of Archbishop Magee*, i. 233, 235.

[4] Malmesbury's *Memoirs of an ex-Minister*, 660.

must have appeared to be, a wide departure from the limits of duty under which such confidence is usually reposed.

It was only at midday on Thursday that I satisfied myself that there was a willingness on the part of the Government to make such concessions as it might be possible to accept, and it was not until a few minutes before five o'clock that the precise details of these concessions were completely specified.

It would have been an inexpressible relief to me had I then been able to consult with all, or even some, of those with whom I was acting; not only because I should thus have avoided a serious responsibility, but also because I could have pointed out in private what I could not do publicly, the material advantages which appeared to me to flow from these concessions as compared with a prolonged contest.

To consult, however, or even to delay, was obviously impossible, and I had to choose between the alternatives of declining an arrangement which could not have been renewed after the debate had commenced, or of accepting terms which, while they secured more for the Church than I believe would ever again have been obtained,[1] enabled us to put an end to what was a violent and was rapidly becoming a dangerous strain upon the constitutional relations of the two Houses.

I could not but choose, at any risk, the latter alternative, and the only circumstance which could make me regret my choice would be if any member of the party should suppose that I had wantonly or even willingly taken such a step without that full communication and consultation which is always desirable.

I have the honour to be, my Lord, your faithful servant,

CAIRNS.

The result was a remarkable tribute alike to his ascendancy and to his strength of will. But he felt

[1] 'The Government agreed to give way upon the clause enacting the precise disposal of the surplus and to accord terms distinctly more favourable than before to the commuting clergy of the disestablished Church. The Peers, on the other hand, gave way upon the principle of concurrent endowment, which, though advocated by the Archbishop, had never obtained the support of Lord Cairns himself' (*Life of Archbishop Tait*, ii. 40, 42).

that he had imposed too severe a strain upon the loyalty of his followers, and that his motives in making terms had been misconstrued. He formally resigned the leadership of the party, and was only induced to resume it by the impossibility of finding anyone to take his place. Early in 1870, however, his health broke down—a warning of future trouble—and he was compelled to seek temporary relief on the Riviera. A mild climate had become for him a matter of life or death, and though till the end of his days he spent the summer vacation in the Highlands, he henceforward made his permanent home among the pine woods of Bournemouth.

During the first months of the session the Opposition in the House of Lords was led by the Duke of Richmond; Lord Salisbury was still unreconciled with Disraeli; the mutual wounds inflicted in the debates of 1867 had bit too deep.[1] But after the Easter recess Cairns was back again, and he proved himself a thorn in the Ministerial flesh during the remainder of the Parliament. On the Irish Land Bill, on the Irish University Bill, on the appointment of Sir Robert Collier to the Judicial Committee of the Privy Council,[2] he was among the most effective assailants of the Government. He was particularly bitter over the Geneva Arbitration, denouncing it lock, stock, and barrel—the treaty, the negotiations, the award. He possessed, indeed, all the instincts of an Opposition leader with an unerring faculty for selecting the points where his enemy was most exposed to attack.

[1] I well remember that as late as 1873 men of experience in public life were confident that the two statesmen could never again be comprised in the same Cabinet.

[2] *Infra*, 368.

CHAPTER XV

LIFE OF LORD CAIRNS FROM HIS SECOND CHANCELLORSHIP TO HIS DEATH.

1874—1885

On Disraeli's return to power in 1874 Cairns became Chancellor for the second time. He was only fifty-five, and his faculties were at their highest pitch; the years which followed were momentous beyond all precedent in the history of English law and legal institutions. A critic who was strongly opposed to Lord Cairns in politics and had small sympathy with his general mental outlook has pronounced him to be unquestionably the greatest judge of the Victorian era, perhaps of the nineteenth century.[1]

His deliverances were never lengthy, but they were exhaustive. They went straight to the vital principles on which the question turned, stated these in the most luminous way, and applied them with unerring exactitude to the particular facts. It is as a storehouse of fundamental doctrines that his judgments are so valuable. They disclose less knowledge of case-law than do those of some other judges; but Cairns was not one of the men who love cases for their own sake, and he never cared to draw upon, still less to display, more learning than was needed for the matter in hand. It was in the grasp of the principles involved, in the breadth of view which enabled him to see these principles in their relation to one another, in the precision of the logic which drew conclusions from the principles, in the perfectly lucid language in which the principles were expounded and applied that his strength lay.

[1] Bryce, *Studies in Contemporary Biography*, 184.

To this testimony may be added that of the late Mr. Hemming, Q.C., a man whose conspicuous ability failed somehow to secure him that place in the legal hierarchy for which he seemed destined by nature.

The barrister who recalls the time when he used to practise before Lord Cairns will instinctively dwell on the essentially judicial quality of his mind as the foundation of the confidence that was always reposed in him. In mere logical acumen others may have equalled, though few surpassed, him. In that largeness of view which alone brings the world of law into touch with the world of business Lord Cairns was never wanting. And his great distinction was that in him these two qualities of acuteness and breadth, which have so often been found antagonistic, were balanced more happily perhaps than in any but a very few of his most brilliant predecessors. There was a singularly convincing power in his judgments. They not only settled the law, but set minds at rest by the enunciation of broad views which commanded universal assent.[1]

The late Mr. Benjamin, speaking from an experience acquired in both hemispheres, pronounced Cairns the greatest lawyer before whom he had ever argued a case. Impressive to an extent which has never been surpassed, he was patient and courteous to counsel of all degrees, though formidable in directness and in powers of sarcasm if a sophistry was being palmed off upon him. 'His figure' during the hearing of a cause 'was so still, his countenance so impassive, that people sometimes doubted whether he was really attending to all that was urged at the Bar.'[2] They were speedily undeceived when his turn came to deliver judgment. And as he was chary in interrupting counsel himself, so he was prompt to check it in others. Lord Blackburn, one of the first Lords of Appeal under the Judicature Act, had acquired in the Queen's Bench a somewhat unpleasant notoriety for his habit of extinguishing argument by deftly delivered 'posers.' His initial effort in this direction was checked,

[1] *Law Quarterly Review*, i. 365. [2] Bryce, 192.

ere an answer could be given, by an icy voice from the Woolsack, 'I think the House is desirous of hearing the arguments of counsel, and not of putting questions to him.'

During his short sojourn in the Court of Appeal, as well as later in the House of Lords, it fell to Cairns to deliver judgment upon a large number of cases arising out of the then recent Company Acts. His decisions in 1866-67 on the law of limited liability, pronounced with the fear of a superior tribunal over his head, have been eulogised as monuments of courage and judicial discretion. When on the unemployed list in 1871 he had accepted the duty of arbitrator in the investigation of the highly involved affairs of the defunct Albert Life Insurance Company.[1] His rulings therein, though published, were, of course, of no binding authority, and were, in some instances, hardly reconcilable with the strict doctrines of equity as administered in the Courts; but they were a bold and intelligent anticipation of the course which the law has taken, and in many respects they afford a curious contrast with those delivered by Lord Westbury two years later in the similar case of the 'European.'[2]

Less satisfactory were his judgments in the Ritual cases, of which a crop sprang up in the years succeeding the passage of the Public Worship Regulation Act of 1874. Lord Cairns, as we shall see, was a strenuous supporter of that measure and of the clauses in it which were most offensive to the High Church party. In the prosecution of the Rev. Charles Ridsdale, the incumbent of St. Peter's, Folkestone, Mr. Herbert Paul, who will

[1] He had previously acted in a similar capacity in conjunction with the late Lord Salisbury under the London, Chatham and Dover Railway Act.

[2] *E.g.* the inclination of Cairns to a newer and wider interpretation of the evidence requisite to establish the debtor's acceptance of a new security was strongly at variance with Westbury's insistence on the rigid construction of the equitable doctrine of 'novation.' Outside legal circles, at any rate, it was held that the former view was more in accordance with the rapidity and complexity of modern commercial transactions. *Vide supra*, 289.

hardly be accused of sacerdotal leanings, asserts, on the authority of the late Lord Justice Amphlett, that the decision was one of expediency rather than of law.[1] An injudicious remark of Chief Baron Kelly, who was one of the three dissentient members of the Privy Council, set on foot a most acrimonious controversy. And, though Lord Cairns' public remonstrance with Sir Fitzroy was characterised by dignity and good temper, his order restraining disclosure of the fact of dissensions in the Judicial Committee of the Privy Council was of doubtful legality, and by no means calculated to allay the indignation of the Ritualists.

It is curious that the lawyer under whose auspices the whole fabric of English justice was reshaped should have his name associated with only a single enactment,[2] and that one repealed in his lifetime. But the years 1873-83 are altogether exceptional, both in the quality and in the quantity of their statutes, and, whether in office or in opposition, Lord Cairns may claim a full share, if not the fullest, of the credit. The history of the Judicature Act belongs more properly to the life of Lord Selborne,[3] and Cairns' restoration of the House of Lords to its old position as the final Court of Appeal was an achievement on the wisdom of which opinion is still divided. But as far back as 1867 Lord Justice Cairns

[1] Mr. Herbert Paul, *History of Modern England*, iv. 352. On the other side see Lord Selborne's *Memorials, Personal and Political*, i. 377, and *infra*, 423.

[2] 21 & 22 Vict. c. 27. It enabled the Court of Chancery to give damages in lieu of specific performance or an injunction, and was repealed by the Statute Law Revision Act of 1883, as being unnecessary after the Judicature Act of 1873, which secured the same object. The custom of calling Acts of Parliament after their introducers is of comparatively modern date. 'The Grenville Act for the trial of contested elections,' writes Lord Campbell, 'was the first which conferred any *éclat* on the name of its author, and Fox's Libel Act is almost the only other down to our own time.' Curwen (49 George III. 118) and Michael Angelo Taylor (57 George III. cxxix) suggest themselves as the exceptions which Campbell had in mind. He himself, as we have seen (*supra*, 208), has three Acts to his account in legal nomenclature.

[3] *Vide infra*, 413.

had been put at the head of the newly appointed Judicature Commission, of which he was generally regarded as the moving and governing spirit. The Vendor and Purchaser Act of 1874,[1] which introduced the cheap and summary procedure by means of summons into disputes over contracts for the sale of land, went a long way towards simplifying the transfer of real and leasehold property. The Conveyancing Acts of 1881 and 1882[2] effected nothing short of a revolution in the form of wills and deeds of assurance, and swept aside the vast mass of cobwebs and covenants which had rendered a knowledge of his own title-deeds so profound a mystery to the lord of many a fair estate. The Married Woman's Property Act of 1882[3] is at once the charter of the '*feme sole*' burdened with possessions and possibilities, and the despair of novelists, whose views on heiress-hunting and elopement have had to undergo complete revision.

The Settled Land Act of 1882[4] has proved an unmixed boon to landowners hampered by estates which they could not keep up, and over which, as mere tenants for life, they possessed no power of disposition; nor has it proved less beneficial to tenants, who could expect little indulgence from an involved or bankrupt landlord. Yet while it has helped many a farmer to tide over the evil days of the great agricultural depression, it has acted as a notable solvent of the territorial interest, and through its operation many a princely collection of books and pictures and statuary has found its way across the Atlantic. The familiar tag, '*Cedes coemptis saltibus et domo*,' has received an extended application to the lifetime of the 'purchaser.'

Against these accomplishments must be set one conspicuous failure. In his attempt to simplify the title to land by a system of universal registration, which he had foreshadowed in his days as Attorney-General, he

[1] 37 & 38 Vict. c. 78.
[2] 44 & 45 Vict. c. 41; 45 & 46 Vict. c. 39.
[3] 45 & 46 Vict. c. 75.
[4] 45 & 46 Vict. c. 38.

was no more successful than Lord Westbury. Like his predecessor, he was in advance of public opinion, and the weight of Lincoln's Inn and Bedford Row was too strong for him. From its birth the Land Transfer Act of 1875[1] was a dead letter, and it has been reserved for Lord Halsbury to get the Land Registry Office into working order.

The date of some of these latter Acts shows that they did not become law until Lord Selborne had succeeded to the Woolsack. But to Cairns belongs the bulk of the praise which the Liberal party is apt to arrogate to itself on their account. They were prepared by his directions and under his instructions. He had spared no pains to obtain the advice of practical men; he had applied to the Incorporated Law Society for suggestions, and the heads of several of the Bills were submitted to the leading conveyancing counsel of the day. The Bills for the Settled Land Act and for the Conveyancing Act were introduced by him into the House of Lords in February 1880, and read a second time in March, but their further progress was prevented by the dissolution of Parliament. In May, after he had ceased to be Lord Chancellor, he introduced them again, and took charge of them until they became law in the sessions of 1881 and 1882.[2] As an illustration of the quiet persistence with which he could press a scheme on which his heart was bent, it may be mentioned that in the session of 1874 he succeeded in carrying the Vendor and Purchaser and the Real Property Limitation Acts, after they had been scheduled by Disraeli for the massacre of the innocents.

Lord Cairns was mainly responsible for the amendments engrafted by Lord Shaftesbury upon the Public

[1] 38 & 39 Vict. c. 87. The fatal flaw was the non-compulsory nature of its provisions. Cairns also attributed his failure to the Act being administered through an office and not through a Court, as is done with the encumbered estates in Ireland.

[2] See Mr. E. P. Wolstenholme's preface to the first edition of his book on the Settled Land Acts, of which, as well as the Conveyancing Act, he was the draftsman.

Worship Regulation Act.[1] The most important of these transferred to a single lay judge the office and authority of the two existing provincial judges and swept away the special Diocesan Courts and the preliminary Commission of Inquiry, contained in the measure when it was first introduced by the Archbishop. The information, conveyed by the Chancellor himself, that it was he who had drawn them and put them into Shaftesbury's hands, had no small share in inducing Archbishop Tait to accept them rather than lose the Bill.[2] From these amendments sprang the jurisdiction of Lord Penzance and the prosecutions that followed. The strong sympathy of a section of the Conservative peers with the imprisoned clergy did something to impair Lord Cairns' influence in the Upper Chamber.

It has been claimed for him 'that he was a most attached member of our Evangelical and Protestant Church of England. He loved her services, delighted in her Liturgy and her Articles.'[3] But it was strictly to the Protestant and Evangelical side of the Establishment that this attachment was confined. To say that he was out of sympathy with the most moderate developments of the Oxford school would be a ludicrous under-statement. His theology was that of the Belfast of his boyhood; the favourite preacher of his early youth had been Dr. McNeile,[4] and from the faith of those days he never swerved or faltered. Not only were 'Ritualism' and 'Puseyism' abhorrent to his soul, but the standard of parochial worship established by Dr. Hook in the middle of the last century seemed to him fraught with error and danger. He was a tower of strength to all those causes which found[5] their natural atmosphere in Exeter Hall. The Young Men's

[1] 37 & 38 Vict. c. 85.
[2] *Life of Archbishop Tait*, ii. 210, 232.
[3] *The First Earl Cairns*, 41.
[4] *Vide supra*, 307 *n.* 1.
[5] The past tense has become necessary since this sentence was originally penned.

Christian Association, the Church Missionary Society, the Bible Society had in him a zealous supporter, a generous friend, an ever-ready and most eloquent advocate. He once declared that to hear Moody and Sankey was the richest feast he could enjoy.[1] It is gravely related[2] that a member of the Hebrew community, who had been attracted by curiosity to a service of the American evangelist, was so astounded to find the Lord Chancellor on the platform, shaking hands with Mr. Moody and producing a Bible and hymn-book from his pocket, that 'he stayed to the after-meeting, became a changed man, and six weeks afterwards sought Christian baptism.' One is compelled to the irresistible comment *credat Judaeus!* But of Cairns' intense conviction of the blessings that were flowing from that movement there is ample testimony. He was one of those who strove hard to obtain from Archbishop Tait an official countenance for the mission, and the cautious and diplomatic letter of the Primate was 'a deep disappointment' to him.[3]

He has been described, not very kindly, as 'the sincere professor of a gloomy creed.' On his sincerity not the smallest doubt has ever been cast; it was not to him, but to another Chancellor of a very different stamp, that the term ''oly 'umbug' was (most unjustifiably) applied. 'Gloomy' his creed may have appeared to those who did not share it. But if we accept the evidence of those who were admitted to his intimacy this creed was to its holder the source of peace and joy immeasurable. During those anxious months in 1878 when the nation seemed drifting into a second Crimean war, the wife of a Cabinet Minister asked Lady Cairns,

'What is the secret of the Lord Chancellor's constant and unruffled calmness which my husband tells me pervades the whole place as soon as he appears?' 'It is this,' was the

[1] *A Generation of Judges*, 165. [2] *The First Earl Cairns*, 28.
[3] *Life of Tait*, ii. 510, where the correspondence is given at length.

reply, 'he never attends a Cabinet without spending half an hour immediately beforehand alone with his God.'

Cairns was indeed a Puritan with whom it seems easier to associate the great Protector than Lord Beaconsfield.

But it cannot be denied that this 'consistent walking' had its narrowing effect, and placed him out of touch with many of his political allies and of the members of his own profession. He had a strong tinge of austerity and a peculiar inability to unbend in company which was not congenial. 'There was a dryness, a coldness, and an appearance of reserve and hauteur about his manner,' says Mr. Bryce,[1] 'which repelled strangers and kept acquaintanceship from ripening into friendship.' Nor was his fondness for the society of those who saw eye to eye with him on religious subjects without an unfortunate result. Of all parasites the religious parasite is the most offensive. The entertainments at the Chancellor's house not unfrequently assumed the form of prayer meetings at which barristers 'not otherwise known for their piety, but believed to desire county court judgeships, were sometimes seen.'[2]

There is a story, better founded, I believe, than many legal anecdotes, to the effect that a certain member of the Common Law Bar, who enjoyed neither a large practice nor the esteem of his comrades on the Western Circuit, where he had originally been in business as an attorney, applied for one of these desirable appointments. He was commended to Lord Cairns only by the regularity of his appearance at religious meetings and by the fervour of his responses, so the Chancellor asked his secretary to make some inquiries. It happened that the next day the secretary found himself at the same breakfast-table with Sir John Karslake, who was then stone blind, but otherwise in full possession of his faculties.[3]

[1] *Biographical Studies*, 190.

[2] *Ibid.* and see Sir Henry Cunningham's *Life of Lord Bowen*, 147.

[3] For a pathetic picture of Karslake in his total eclipse see *Life of Lord Coleridge*, ii. 241.

'Do you happen to know anything, Sir John,' said the Secretary, as they were leaving the room, 'of a man on your old circuit called ——?' 'Know anything of ——?' was the rejoinder. 'I should just think I did; he's certainly the cleverest fellow I ever knew——' This was enough for the secretary, who fled without waiting for particulars of ——'s ability, and in the course of the next twenty-four hours —— received a satisfactory answer to his application. Meanwhile Sir John, unaware that his interlocutor had departed, went on to complete the sentence with a chuckle—'the cleverest fellow I ever knew; he's the only man who ever did my clerk out of his fees.'

On the whole, so far at least as the High Court of Justice was concerned, Cairns's appointments were excellent, though in one or two instances political claims were allowed to obscure more important considerations. The fourteen puisne judges whom he raised to the Bench were, for the most part, in every way qualified: let it be sufficient to mention the names of Lord Bowen, Lord Lindley, and Sir Edward Fry. It was always said, with what truth I know not, that Vice-Chancellor Malins considered that his claims to a Lord Justiceship might have been regarded with more respect by an old pupil. Amongst other incidents in his second term of office it may be mentioned that Cairns incurred the resentment of Dr. Kenealy for not interfering to procure a new trial for the Tichborne claimant. A less likely person than the Chancellor to be concerned in the Jesuit plot which the Doctor professed to be the main motive power against the 'unfortunate nobleman' languishing in Dartmoor it would be difficult to conceive. And at the same moment Chief Justice Cockburn was attacking him fiercely for not immediately depriving Kenealy of his silk gown.[1] But 'Cockburn has mistaken his man,' wrote Coleridge, 'in thinking he can lecture and drive Cairns to do what he wants.'[2]

[1] *Vide supra*, 207. [2] *Life of Coleridge*, ii. 246.

'Lord Cairns,' said the late Lord Salisbury in the House of Lords, 'united qualities not often granted to one man: he was equally great as a statesman, as a lawyer, and as a legislator.'[1] The whole of this claim is not so easily conceded by his political opponents. Mr. Bryce, whose entry into public life was made at the general election which finally dismissed Lord Cairns from office, presents us with a very different estimate:

> In politics his impartiality and elevation vanished, even after he had risen so high that he did not need to humour the passions or confirm the loyalty of his own associates. He seemed to be not merely a party man, which an English politician is forced to be, because if he stands outside party he cannot effect anything, but a partisan—that is, a man wholly devoted to his party, who sees everything through its eyes and argues every question in its interests. He gave the impression of being either unwilling or unable to rise to a higher and more truly national view, and sometimes condescended to arguments whose unsoundness his penetrating intellect could hardly have failed to detect.[2]

This passage must be read subject to a considerable discount, for it is difficult to imagine two men with fewer points of contact than Lord Cairns and his critic; yet it cannot be gainsaid that the peculiar atmosphere in which the former was brought up had a strong influence on his judgment: an Ulsterman he was born, and an Ulsterman he remained to the last. But to many, and to myself among the number, it will always seem that his outlook on matters of national and imperial policy was bolder and more far-seeing than that of Mr. Bryce.

[1] Hansard, ccxcvi. 1436.

[2] *Biographical Studies*, 195. Lord Selborne writes somewhat to the same effect. 'It was a blemish upon Lord Cairns' powers that he used all arguments, good, bad, and indifferent, which came to hand, like a lawyer who takes every point suggested in his brief, marshalling them with great skill and in the most lucid order, but without discriminating between those which were substantial and those which were not' (*Memorials, Personal and Political*, i. 443).

To the 'inestimable value of his calm judicial mind' Lord Salisbury bore witness in the speech from which I have just quoted. Firm and sage in council, he ranked next after Disraeli in the estimation of his party, and on no one did that astute veteran rely so implicitly, none did he regard with a warmer personal esteem.[1] It is said that during the crisis which followed the Treaty of San Stefano, when Lord Beaconsfield was desirous of pushing matters to a point whither his colleagues refused to follow him, the only two voices raised in unison with the Premier were those of Lord Cranbrook and Lord Cairns. He was the only man beside the Opposition Whips who assisted Sir John Gorst in that thorough recasting of the Conservative organisation which rendered possible the great successes of 1874. Directly Mr. Gorst, as he then was, heard of the sudden dissolution of Parliament he rushed off to Disraeli's house and found his leader just coming down to breakfast in his dressing-gown. 'Find out where Cairns and Derby are, and get them to come and see me immediately,' were his instructions.[2] On the first receipt of the news the leader of the Opposition had been restless, dejected, and impressed with the belief that Gladstone had played his cards boldly and well.

Cairns came full of vigour, hope, and counsel, and after an hour's talk so restored the confidence of his ally that Disraeli sat down in the best spirits to compose his electoral manifesto.[3]

In the course of 1878 the Great Seal of England being worn out and a new one being ordered to be made, her Majesty directed that the precedent of 1831 and 1860 should be followed, and the old seal was divided between

[1] On the formation of the Ministry in 1874, Selborne wrote to a friend, 'that the only one of Disraeli's colleagues with strength enough and judgment to make him a real power in the Cabinet is Cairns.'

[2] *The Fourth Party*, by Harold Gorst, 32.

[3] Bryce, *Biog. Studies*, 187.

the reigning Chancellor and his predecessor.[1] In September of the same year Cairns was raised to the dignity of an earldom. The promotion was well earned, for few had done more to rally public sentiment round Lord Beaconsfield. His speech in defence of the summons of the Indian troops to Malta was a masterpiece, and carried conviction to many waverers outside the walls of the chamber in which it was delivered.[2]

In May 1880 he quitted office for the last time. Asked by a friend how Lord Beaconsfield bore his unlooked-for and tremendous reverse he replied: 'Wonderfully! With the highest courage. He is the stormy petrel who delights to breast the waves in the very teeth of the gale.'[3]

But the petrel's hours of flight were numbered. On April 19, 1881, Lord Beaconsfield died in his house in Curzon Street, and the firmest of all Cairns's political friendships was severed.[4] There were some[5] who would gladly have seen the ex-Chancellor resume his former position as Conservative leader in the House of Lords, which in the existing state of the party carried with it the almost certain reversion of the Premiership. Lord Salisbury was looked upon with suspicion for his supposed rashness in foreign politics and for his want of restraint in epigram. The claims of Earl Cairns, however, were not pressed. His manner had given him nothing in the shape of a personal following; he was entirely lacking in magnetism, and with all his immense ability and all the powers of his intellect and eloquence he never acquired

[1] *Vide supra*, 119; Lord Selborne, *Memorials, Personal and Political*, i. 477.

[2] Hansard, ccxl. 211.

[3] *The First Earl Cairns*, 52.

[4] I am not aware that Cairns ever paid any public tribute to his leader. The only passage I can find is a somewhat frigid reference in Hansard more than three years afterwards to 'our late much lamented friend Mr. Disraeli.' It is to be hoped that Mr. Monypenny's forthcoming biography of Lord Beaconsfield will throw light on the intimacy which existed between the two statesmen for so many eventful years.

[5] *E.g.* Mr. Frederick Greenwood, who was then making the *St. James's Gazette* the ablest organ of militant Conservatism.

the sway over the Peers exercised by a Lyndhurst or a Halsbury.

Nor could his health have stood the strain of a constant attendance in Parliament. The constitutional weakness of chest and lung against which he had struggled all his life was reasserting itself, and to this was added a growing deafness due to what is termed 'ivory in the ear.' To this cause must be attributed the growing rarity of his appearances at the judicial sittings of the House of Lords and the Privy Council. In listening to the argument before the former tribunal he was compelled to sit down close by the Bar, and even then he had to ask the speaker to raise his voice.

But he could still be relied on for a full dress debate, and during those years of opposition he was one of the fiercest critics of the Gladstone Government. He fought their Irish Land policy inch by inch; his speeches on the Compensation for Disturbance Bill of 1880 and the Land Act of 1881 [1] were worthy of his greatest days. But the most memorable of all his speeches, the only one, indeed, by which his fame is preserved, was his attack upon the arrangement with the Boers concluded after Majuba. How deeply he was moved by what he regarded as 'Peace with Dishonour' [2] can be gathered from the indignant peroration, delivered upon one of those rare moments when he gave free vent to his carefully guarded emotion:

I wish that while the Transvaal remains, as you say it does, under our control, the British flag had not been first reversed and then trailed in insult through the mud. I wish that the moment when you are weakening our Empire in the East had not been selected for dismembering our Empire in South Africa. These are the aggravations of the transaction. You have used no pains to conceal what

[1] Hansard, cclv. 3; cclxiv. 535.

[2] This was the title under which the speech was printed and circulated. It is not difficult to understand why Mr. Bryce regards Cairns as too much of a partisan.

was humbling; and a shame that was real you have made burning. But the transaction without the aggravation is bad enough. It has already touched and will every day touch more deeply the heart of the nation. Other reverses we have had, other disasters; but a reverse is not dishonour, and a disaster does not necessarily imply disgrace. To her Majesty's Government we owe a sensation which to this country of ours is new, and which certainly is not agreeable.

'In all the ills we ever bore,
We grieved, we sighed, we wept; we never blushed before.'[1]

The source of this now familiar quotation gave rise to no small argument till it was discovered in the works of Abraham Cowley. No one hitherto had suspected Cairns of acquaintance with the poets of the Restoration, and the mystery was solved by the discovery that Peel had utilised the lines in the House of Commons five-and-thirty years earlier.[2]

It was on very exceptional occasions that Cairns made a political speech outside the walls of Parliament; the only calls which he acknowledged were those of philanthropy. But in June 1882 he was induced to break through his rule and address a meeting of university men at Oxford. The occasion was the annual dinner of the Canning and Chatham Clubs, the nursery, as their names imply, of undergraduate Conservatism; and for

[1] Hansard, cclx. 278.

[2] The version of them quoted by Mr. Manson (*Builders of our Law*, 210) is suggestive of the Georgian recension of Chevy Chace. The original is not quite correctly quoted by either Peel or Cairns. The passage occurs in an ode inserted in 'A discourse by way of vision concerning the Government of Oliver Cromwell,' and the last stanza runs as follows:

Come the eleventh plague, rather than this should be;
Come sink us rather in the sea.
Come rather pestilence and reap us down;
Come God's sword rather than our own.
Let rather Roman come again,
Or Saxon, Norman, or the Dane,
In all the *bonds* we ever bore,
We grieved, we sighed, we wept; we never blushed before.

nearly an hour Lord Cairns held us, to use an odious Americanism, spellbound. Unhappily the custom of the country excluded reporters, and, to my shame be it said, I cannot, at this distance of time, recall a single one of the stately and incisive phrases which fell from the lips of the man whom Lord Beaconsfield delighted to honour. But I can well remember that the first impression, among the younger of us at any rate, was that of surprise. We could hardly believe that this glowing, virile orator, with the grand presence and the lofty ideals of public duty, who roused our post-prandial enthusiasm to frenzy with his flood of argument and sarcasm, could be the cold, austere, and cautious lawyer whose fondness for Moody and Sankey's hymns had been the fount of so much indifferent humour.

In the contest that arose between the two Houses over the Reform Bill of 1884 Cairns took a prominent part. Speaking on July 7, immediately after Lord Kimberley, who moved the second reading, he brought forward an amendment by which, in effect, the Lords declined to consider the extension of the franchise apart from the redistribution of seats. It was drafted in terms which gave scope for the exercise of his full dialectical skill, and it was carried by a majority of fifty-nine—205 to 146. In the course of debate a few days later the passage at arms was so sharp that Earl Cairns and Earl Granville were both on their legs at the same time, each refusing to give place to the other. The matter, owing to the want of any standing orders in the Upper Chamber, was only settled by Lord Cork bluntly moving that the leader of the House be heard, a proposal to the contrary which was made by Lord Beauchamp being negatived by a single vote.[1] Cairns was under the impression that Lord Granville had made an improper disclosure of what had passed between them at a private interview, 'as to which,' he said, 'I would sooner have cut off my hand than spoken of it to anyone without

[1] Hansard, ccxc. 801–4, July 11, 1884.

permission.' Lord Granville contended that the conversation was not 'private and confidential,' and Cairns retorted bitterly that it was a lesson to him at his age to be more careful of entering into communications which the experience of the last twenty-four hours had taught him were so dangerous.

When the agitation against the House of Lords raged highest throughout the summer and autumn of that year, Cairns's speech on the second reading of the Franchise Bill was an armoury for the Anti-Ministerialists. The storm subsided as suddenly as it rose, and though Cairns did not take any part in the negotiations between the party leaders which brought the controversy to a close, an informal conference held in Scotland between the Duke of Richmond, the Marquis of Salisbury and himself is believed to have played a large part in inducing the Conservative Lords to a conciliatory frame of mind.

That winter he suffered from a severe attack of asthma, and circumstances in his own family had occasioned him much anxiety and annoyance. It can well be understood that in the Cairns household there was small encouragement for the stage or for anything or anybody connected with it. It is easier, then, to imagine than describe his feelings when his eldest son, Lord Garmoyle, announced his engagement to a beautiful actress of unblemished reputation, who was then playing in Gilbert and Sullivan opera. Parental pressure succeeded in preventing the marriage, but not without the disagreeable publicity of a breach of promise action in which the young lady received a very substantial solatium.[1]

Lord Cairns's last appearance in the House of Lords was on March 18, 1885, when, taking the place of his friend, Lord Shaftesbury, he defeated a resolution in favour of opening the Natural History Museum at South Kensington on Sunday afternoons. A few days later he presided over a great meeting of the Church Missionary Society, at which a band of young Cambridge graduates,

[1] *Annual Register*, 1884, 44.

many of them famous for their prowess in the cricket field, were given a farewell on the eve of their departure for China. The next morning he went down to Bournemouth; a treacherous April storm, which caught him out riding, brought on a chill that rapidly developed into alarming and only too familiar symptoms. On the night of March 31 it was evident that he was sinking, and the next morning he died, conscious to the end. A last faint whisper reached those around him: 'It is necessary for each one of us to follow in the steps of our great Master; let nothing come between us and this.' He was buried at Bournemouth on April 7; his widow still survives him. His eldest son died in 1890 without leaving male issue; the next brother died unmarried in 1905, and the present peer is the Chancellor's third son, the fourth holder of the title in a period of twenty years.

His death was a heavy and, as it seemed, an irreparable loss to his party, who, by the irony of circumstance, found themselves in office within the next three months. It is very doubtful, however, whether the state of his health, had he been living in June 1885, would have permitted him to go back to the Woolsack, or intervene actively in politics. He was, without any comparison, the greatest intellectual force which the Bar has contributed to the Conservative ranks since Lord Lyndhurst, and he possessed qualities to which the latter made no pretence. But no man of his position has ever had so few friends in the walks in which his daily life was cast. He was not one who readily gave his heart, and his rare intimacies were confined, irrespective of rank or station, to those who shared his views in social reform and religion. But Lord Coleridge, speaking in the House of Lords, shortly after his death, strove to combat the common impression that he was cold and ungenial in manner: 'I always found him most cheerful and amusing; few men had a keener sense of humour.'[1] The Lord Chief

[1] Hansard, ccxcvi. 1440.

Justice at the same time bore witness to the width and accuracy of his literary judgments.

It is improbable, nay, impossible, that a sense of humour could have been denied to one of so powerful an intellect as Lord Cairns, however severely, it may have been repressed, and sarcasm, which implies humour, was a formidable weapon in his hands. Very few of his letters have found their way into print, but the one or two published by Professor Laughton in the Memoirs of Henry Reeve show a lightness of touch which is quite out of keeping with the ordinary conception of his mental attitude. Take for example the following:

I enclose the *Agra* judgment, with a few verbal alterations. I trust some member of the Board with a strong nautical twang will be so good as to deliver it; and if the speaker could but adopt that hitch of the trousers which made Lord Clarence Paget so effective in the House of Commons, it would, I have no doubt, add much to the effect of a composition otherwise so tame.[1]

One pithy saying of his has been recorded by a writer to whom the pietistic rather than the humorous side of his character was all-important. Shortly after the general election of 1880 Lord Cairns, whose three elder sons were educated at Wellington College under a son-in-law of Mr. Gladstone, remarked to a friend that the great majority of schoolmasters throughout the kingdom were Liberals. 'What a dark look-out!' was the rejoinder. 'On the contrary,' he replied. 'I see in this great hope for our nation's future. The *boys* are certain to be Conservative.'[2]

[1] *Memoirs of Henry Reeve*, ii. 129. The judgment in the 'Agra,' a case of collision at sea, was actually delivered by Sir William Erle.

[2] *The First Earl Cairns*, 51.

CHAPTER XVI

LIFE OF LORD HATHERLEY DOWN TO HIS ENTRY INTO PARLIAMENT

1801–1847

WILLIAM PAGE WOOD was born on November 29, 1801, in Falcon Square, St. Giles's, Cripplegate, the fourth child of that redoubtable alderman who has figured so prominently in these pages [1] as the champion of Queen Caroline. The Woods were a west country family who could trace descent from Plantagenet times, but had long been parted from the ancestral acres.[2] Matthew Wood, the father of the Chancellor, was himself the eldest son of a serge manufacturer at Tiverton, and his early years were spent as traveller to a firm of Exeter druggists. At the age of eight-and-twenty he was in partnership as a hop merchant in a big way of business in the City of London, and largely interested in the Wheal Crennis Copper Mine. Endowed with industry and capacity, and of a vehement and somewhat pushing disposition, he was for many years one of the most conspicuous figures in political life. A strong Radical, who never broke loose, however, from his Whig allegiance, he represented the City in nine successive Parliaments (1817–1843). He was Sheriff in 1809, and was in this capacity compelled to arrest Sir Francis Burdett and hale him to the Tower under the Speaker's warrant. He was elected Lord Mayor in 1815, and again in 1816, a distinction without precedent

[1] *Ante*, vol. i. 232, 238, 423.

[2] See *Memoir of Lord Hatherley*, i. 2; *From Midshipman to Field Marshal*, by Sir Evelyn Wood, i. 1.

since the time of Sir Richard Whittington. During his second term of office he largely contributed, by his courage and presence of mind, to the suppression of the Spa Fields riot, for their share in which Thistlewood and the Watsons were afterwards tried on the charge of high treason.[1] A member of the Fishmongers, the traditional Whig company in which his grandson, Field Marshal Sir Evelyn Wood, recently filled the office of Prime Warden, he took a leading part in all municipal and social affairs, and his name was perpetuated until quite recent years by the 'Maria Wood' barge, named after his daughter, in which the Civic Fathers were wont to navigate the Thames on state or festive occasions.

In the year 1819 he was one of the trustees for the creditors of the heavily encumbered estates of the Duke of Kent, and it was thanks to a bond for a considerable sum of money into which he entered jointly with Lord Darnley, that the Duke and Duchess were enabled to return to England in time for the Princess Victoria to be born at Kensington Palace.[2] The service was not forgotten, and among the first honours bestowed by her late Majesty, on her accession to the throne, was a baronetcy for Matthew Wood. The other intervention of the worthy Alderman in the affairs of the royal family was not so auspicious. To him more than to any other individual was due the decision of Caroline of Brunswick to beard her husband on English soil.[3] The sordid tragedy of the Bill of Pains and Penalties, and the death of the Queen from a broken heart, were the consequences. Wood himself showed great indiscretion and want of taste during the months that preceded the so-called trial; he was the object of much satire and vilification, and he earned from Brougham the nickname of 'Absolute Wisdom,' which stuck to him for the rest of his days.'[4]

[1] *Ante*, vol. i. 117. [2] *Memoir of Lord Hatherley*, i. 70, 71.

[3] *Ante*, vol. i. 232, 234.

[4] The most famous and elaborate attack upon him was contained in a pamphlet by Theodore Hook, 'Tentamen, or an essay towards the

But his devotion to a cause which excited so much enthusiasm among high and low led in the sequel to a substantial addition to his fortune.[1]

William Page Wood received his early education at the Free School at Woodbridge in Suffolk. And after a spell of Latin and Greek under a certain Doctor Lindsay, who kept a school at Bow, then described as 'near London,' he was transferred in September 1812 to Winchester. Dr. Gabell the head master was a good teacher but a bad disciplinarian, and Wood's career as a Wykehamist was cut short by his participation in a rebellion against the constituted authorities which took the shape of a 'barring out,' and was only quelled with the aid of a detachment from the Winchester garrison.[2] He has left a graphic account of the revolt in a letter to his friend, Walter Farquhar Hook, who had just gone up to Christ Church, and his defence of the rebels shows what small alteration the spirit of English public school-boys has undergone during the last ninety years.

history of Whittington some time Lord Mayor of London by Vicesimus Blenkinsop, LL.D., F.R.S., A.S.S., &c.' This professed to be a critical examination of 'a curious ballad of the times which is to be found at this moment in the British Museum (Messalina, 2).' The title of this purely imaginary compilation was 'Ann exceeding, exacte and excellente goode ballade, written by mee Geoffry Lydgate, uponne Masterre Whyttingtone hys catte.' In the following verses Hook succeeds in hitting off the rivalry between Wood and Brougham :

'A conynge monkeye off ye lawe,
Ass bye ye fyre he satte,
Toe pick hys nuts out, used ye pawe
Off Whyttingtone hys catte!

But Whyttingtone discovered playne
Whatte this vyle ape was atte;
Whoe fayledde thus hys nuttes toe gayn
And onely synged ye catte!

Thenne Whyttingtone ynn gorgeous state,
Sythynge wythoute his hatte,
Broughte toe hys house atte Grovner Gate
Thys moste yllustrious catte.'

[1] *Infra*, 348.
[2] *Memoir of Lord Hatherley*, i, 11, 106.

He (Gabell) inflicted corporal punishment on the college prefects, which I should esteem such a disgrace that I would rather be expelled forty times. I was sorry, my dear Walter, to find you disapproved of the rebellion. I must confess, upon cool thought, it does not appear to me that any boys are justified in using violence against their masters; but surely if any were, we were. You forget that his giving so few remissions for commoners speaking, his giving no holiday for Leopold's and none for Hombourg's marriages, though other public schools have a fortnight additional holidays, and his nearly expelling a prefect for the usual practice of setting a watch all happened this half-year.[1]

Though under seventeen Wood had worked his way up from the lowest form, till he was the second prefect in commoners, and as such he had been *ex officio* among the ringleaders, but his ability and good conduct had made him a favourite with the head master. The first and third prefects were promptly expelled, but it was intimated to young Wood that on making proper submission he would be received into the fold. The rebels, however, had sworn to stand and fall together; Wood absolutely refused to depart from his agreement, and was accordingly 'sent down,' to the no small dudgeon of his father, who, like many a British parent since, found a difficulty in appreciating the niceties of the schoolboy code of honour.

Wood was too young to proceed to the university for which he was destined, and on the suggestion of his uncle, Mr. Page, he was placed *en pension* in the family of M. Duvillard, Professor of Belles Lettres in the Auditoire at Geneva. The two years that were spent on the shores of Lake Leman he always described as the most satisfactory portion of his education. He not only made himself master of the French and Italian languages, but he acquired enough mathematics, for which study a knowledge of French was then invaluable, to carry him through Cambridge. He learnt, moreover, to read the

[1] *Memoir of Lord Hatherley*, i. 113.

classics in a manner more lively if less exact than the style then in vogue at English public schools, and from the law lectures of Signor Rossi he imbibed views on early Roman history which were as yet confined to the continent of Europe. Avoiding the somewhat extravagant English colony he mixed as freely as his studies would permit in the general society of the place, which included such eminent visitors as Dumont and Sismondi. Here he obtained an ease of manner and a taste for the amenities of life for which young Englishmen of the middle classes were then by no means remarkable. Within the walls that had sheltered Beza and Calvin the future Lord Chancellor of England became a famous waltzer and learnt to enjoy the merry *contredanses* of France and Italy.[1]

His residence at Geneva was terminated by a curious episode. In the spring of 1820 Queen Caroline had set her face for England, and the Alderman had started to meet her. Geneva was on the route, and William Page Wood was instructed to attach himself to her suite and to journey in her company to Montbard, where they were joined by his father and Lady Anne Hamilton. During the negotiations at St. Omer, he was used as a sort of Queen's messenger to summon her Attorney-General and Lord Hutchinson in their turn to the royal presence. For the rest of her short life Caroline was on terms of the closest intimacy with the Wood family, and her genuine, if somewhat capricious, kindness was freely extended to the children and grandchildren of the man she regarded as her benefactor.[2] At the Queen's suggestion William was employed in conjunction with one of her followers, the Chevalier Vasselli, and an English barrister named Henry, to collect rebutting evidence on her behalf in Italy. His knowledge of Italian made him a useful interpreter, and from July to the middle of October he was travelling from one famous city to another,

[1] *Memoir of Lord Hatherley*, i. 133.

[2] See the *Memoirs of Lord Brougham*, ii. 424.

translating the statements of witnesses and helping in the preparation of the Queen's case.[1]

In the course of this employment he spent some weeks with Bartolomeo Bergami in his villa at Pesaro, a strange acquaintance for one who, all his life, was the standard of propriety and decorum. Young, enthusiastic, and grateful to a kind mistress, William Wood was absolutely convinced of the groundlessness of the charges against the Queen, whom he held in Denman's famous words to be pure as unsunned snow, and from this belief he was never shaken to the end of his life. It may be noticed as a curious example of the height to which partisanship was excited over the case that Walter Hook's father, whose brother was the famous editor of 'John Bull,'[2] forbade his son to hold any communication with young Wood, and the correspondence between the two friends was broken off for several months.

In October the latter was recalled to enter into residence at Trinity, Cambridge, from which college he graduated as 24th Wrangler in 1824. His low place was a great mortification, for he had won an open scholarship and was regarded as among the most promising students of his year; and though he had entered for the Classical Tripos, instituted that very year, the cold marble floor of the Senate House rendered him so ill that he was compelled to retire from the examination. The disappointment, however, was more than atoned for by his unexpected election to a Trinity fellowship in October 1825. It was very unusual for a Bachelor of

[1] From a letter printed in *A Queen of Indiscretions*, by Professor Clerici (English translation, 320), the investigations of Caroline's agents in Italy do not appear to have been conducted with any great exercise of judgment. Professor Clerici's work has only been published in English dress since the publication of my former volume. It does not throw any fresh light that I can discover on the story of the Queen, except in illustration of the espionage to which she was subjected on her travels. It is remarkable, however, that the author, himself an Italian, finds it exceedingly difficult to place an innocent construction on Caroline's relations with Bergami.

[2] *Ante*, vol. i. 261.

Arts to be chosen at the first trial,[1] and Wood's election was endangered at the eleventh hour by the Radicalism which the master, Dr. Wordsworth, had detected in one of his undergraduate compositions. In his second year he had won the silver cup for an English declamation, and in championing the Revolution against the Restoration he quoted with emphasis 'the right divine of kings to govern wrong.' Academic Toryism was still unbroken, and these words in the mouth of the son of Alderman Wood had an exceptionally sinister sound. Fair play and common sense, however, prevailed, the veto was withdrawn, and Wood found himself at the Fellows' table with Macaulay and Mr. (afterwards Sir George) Airy among his immediate seniors.[2]

By this time he was fully embarked on the profession of his choice. He had been told by his father that he would have to rely entirely upon his own resources when once his education was completed, and he had begun his legal studies immediately upon taking his degree. But before following him along that path which was to lead, after many vicissitudes, to the Woolsack, some adequate reference must be made to what was the most enduring influence of his life, his friendship with Walter Farquhar Hook.

Hook, afterwards Vicar of Leeds and Dean of Chichester, though denied his due ecclesiastical preferment by the heavy hand of Lord Shaftesbury, has left one of the most famous names in the annals of the Church of England, both as a preacher and as a parish priest. At Winchester he was Wood's senior by three years, but this disparity in age did not form any bar to their intimacy.

He had devoted himself so much to English literature, writes Lord Hatherley of his friend, that he fell below me in the school. In this respect we became mutually useful to each

[1] Macaulay was not elected till the third and last endeavour, but then, though a Craven scholar, he had failed to satisfy the examiners in the Mathematical Tripos.

[2] *Memoir of Lord Hatherley*, i. 47.

other. Hook was passionately fond of reading Shakespeare and Milton when I first knew him, and a small order of knighthood, called after them the Order of Saints Shakespeare and Milton, was founded by him, of which he and I were styled the Knights Grand Masters. Being rather quick over my work, I was able to help my older friend forward in Greek and Latin in return for the improvement I derived from his mature judgment and larger powers of thought in English and classical reading.

But a far greater blessing, continues the writer, was derived from his friendship. When I was just fifteen a confirmation was held by the Warden[1] in the college chapel. I was much excited by this, and it was owing to the invaluable counsel of my friend that I was encouraged to prepare myself for that rite and the more solemn one that succeeded it.[2] This was an epoch of life never to be forgotten. It is not right to say more on this subject here than that from this moment, though with many stumblings and fallings, I was enabled to pursue a course of life animated by a principle then for the first time appreciated and understood.[3]

This passage may be commended to those who describe English public schools in the pre-Arnold era as mere nests of cruelty and heathenism.

Neither absence, nor matrimony, nor the pre-occupations of two exceptionally busy lives had power to sunder or to lessen the affection between the churchman and the lawyer. They usually corresponded weekly, seldom indeed did a month pass without an interchange of letters in which the secrets of the heart were laid bare, and until Dr. Hook's death in 1876 they were as David

[1] The Warden, Dr. Huntingford, a former tutor of Lord Sidmouth, held the See of Hereford, *in commendam* as it were, from 1815 to his death in 1832. He let the palace to his secretary and lived at Winchester, whither the candidates for ordination had to repair by coach from the cider county or wherever else they resided. Six weeks in the year were the utmost that his lordship bestowed upon his diocese.

[2] Though the alderman was a Nonconformist, his family were all brought up as members of the Church of England, the eldest son, indeed, taking Holy Orders.

[3] *Memoir of Lord Hatherley*, i. 15.

and Jonathan. The late Dean of Winchester,[1] who became, in turn, the biographer of each of them, has sketched in admirable language their points of contact and of difference.

Both were warm-hearted and of eager temperament, but while Hook was naturally impetuous and irascible, his friend was invariably sweet-tempered and kept his enthusiasm under the control of a calm and sober practical judgment. Speaking generally, it would be true to say that my uncle had the more powerful intellect, was more accomplished, more widely read, and more evenly balanced in temperament. But the other had a certain fire of energy, a depth of human sympathy, a fund of peculiar humour, and a touch of eccentricity which enabled him to exercise an extraordinary influence over other men. The contrast in outward appearance between the two friends as youths must have been curiously striking. Hook was tall, gaunt, pale-faced, red-haired; while my uncle was short and small-limbed, but inclined to be stout, and of a ruddy complexion.[2]

Wood had been entered at Lincoln's Inn in Trinity term, 1824, Brougham and Denman signing the necessary form of recommendation. For his first year he studied equity pleading in the chambers of Roupell; and the remainder of the time previous to his call was spent with Mr. Tyrrell, one of the best conveyancers of the old school, who in his day had been a pupil of Sugden's. Tyrrell, whose abilities were recognised by a seat upon the Commission to inquire into the law of real property, was one of those who made it their custom to give their pupils solid instruction as well as the run of their papers.

[1] Dr. W. R. W. Stephens, whose mother was a sister of Lord Hatherley.

[2] *Memoir of Lord Hatherley*, i. 102. In later life Lord Hatherley's long narrow face and deep-set eyes gave him an appearance of sternness which his character belied. A contemporary speaks of 'the towering precipice of forehead which looked down upon the Woolsack.' As the son of Dr. Hook's successor at Leeds, I was cradled on stories of the old vicar's geniality and quaint humour; in my recollection he is a large and unwieldy man with all trace of red vanished from his hair and with a face which only the humorous twinkle of the eye redeemed from downright ugliness.

Under him Lord Hatherley considered that he laid the foundation of all such knowledge of English law as he eventually possessed.[1]

During the days of his apprenticeship Wood received much kindness from Basil Montagu, the learned lawyer and accomplished scholar,[2] whose 'Life of Bacon' made the peg for Macaulay's notorious essay. At his instigation Wood undertook the translation of the 'Novum Organum,' which appears in Montagu's edition of Bacon's works.[3] The young Fellow of Trinity was of an eminently sociable disposition, and at the Montagus' house in Highgate he made acquaintance with the literary lions of London, with Edward Irving, with Carlyle, with Barry Cornwall, with the Kembles, and, above all, with Coleridge, at whose feet he sat through many a summer evening.

Not many barristers have begun their active life with a larger and more miscellaneous stock of experience. As a boy he had met the notabilities of an earlier generation who attended the civic feasts at the Mansion House. He had been a playgoer when hardly out of the nursery. In company with his father he had visited Cobbett in Newgate, and brought to Lord Cochrane, in the King's Bench prison, the news of his re-election for Westminster. He had listened to Castlereagh and Canning under the gallery of the old House of Commons. He had seen our terrible penal laws administered with draconian severity at the Old Bailey, and he was smuggled into Court by Wilde to hear Ashford's right to the wager of battle argued before Lord Ellenborough.[4] And a very different reminiscence of his youth may be here recalled. One of his fellow students at Geneva had been the Prince

[1] *Memoir of Lord Hatherley*, i. 49.

[2] And the husband of Mrs. Montagu, Queen of the Blue-stockings.

[3] Wood was also a profound admirer of Bishop Berkeley, and contributed the article on him in Hook's *Dictionary of Ecclesiastical Biography*. He always likened him to the pious Eastern sovereigns who dug wells and built cisterns for the wayfaring traveller.

[4] Ashford *v.* Thornton, i ; Barn. and Ald. 405.

of Leiningen, a son by her first marriage of the Duchess of Kent, and very shortly after his return to England Mr. Page Wood was summoned to Kensington Palace and had the honour of kissing the hand of the little Princess Victoria, then aged fourteen months.

He was called to the Bar on November 27, 1827, and took chambers at 3 Old Square. His father's City connection and the good word of his old master in the law, Mr. Tyrrell, brought him business as an equity draftsman and a conveyancer from the very first. He never had any opportunity of knowing what it was to be idle, and in his first year he made 600 guineas.[1] His first essay on his legs in Court was in the case of Westmeath *v.* Westmeath:

> After two counsel, he tells us, 'had been heard for Lady Westmeath, and Mr. Adam (who was my leader) for Lady Rose Nugent, the House said that they did not intend to hear any more counsel. Mr. Adam (meaning it kindly) said his friend Mr. Wood expected to be heard, and Lord Lyndhurst, with his usual courtesy and kind consideration for young men, said, 'Oh, let us hear him then.' This was an inauspicious beginning, but I got through it tolerably well.[2]

Very different was his experience at the hands of Sir John Leach, recently promoted to be Master of the Rolls, whose habitual rudeness to the Bar procured him the unique distinction of a deputation of remonstrance from the leaders of his Court. Wood had been instructed to ask for payment to executors of the small arrears of an annuity—an amount of a few pounds—when the principal sum was about to be paid out, on the death of the annuitants, to the parties entitled in remainder.

[1] *Memoir of Lord Hatherley*, i. 150.

[2] *Ibid.* i. 53. I have not succeeded in verifying the reference. It cannot be the famous alimony suit, Westmeath *v.* Westmeath, to which there are such frequent references in Greville (1st series, vol. iii. 119, 124, 140), for the appeal in that case was heard in the Privy Council in 1834, and Lyndhurst was not a member of the Board. The hearing in Westmeath *v.* Westmeath reported by Jacob (cases in Chancery, 126) was given some years before Wood's call.

Strictly speaking a petition, the costs of which would have exceeded the fund, was necessary, and the gist of the application was that this might be dispensed with.

'Sir, you might as well ask me to pay it to the porter at Lincoln's Inn Gate,' was the discouraging answer. Happily, adds the narrator, there is not at the present day any necessity for dreading such a reply, nor is it believed that there is a judge who would make it.

I must confess that in my own very limited experience I have come across more than one of their lordships who were perfectly capable of such an atrocity; but Wood's sensitive spirit never forgot the incident, and many years afterwards, when on the Bench, he would tolerate the prosiest and most irrelevant discourses from the Bar. 'True,' he once said to a friend as they were walking home from Lincoln's Inn, 'Mr. —— assumed that I was ignorant of the A B C of law, but I recollected how I was once snubbed by Leach when I was a junior, and I resolved to hear him out.'

Though he acquired a steady and an increasing practice at the Chancery Bar, Wood's most lucrative class of employment was before parliamentary committees. The Parliamentary Bar, as a career, dated, in Lord Hatherley's judgment, from the passing of the Liverpool and Manchester Railway Bill in 1827, the year of his own call. Before that time the principal business of the committees had been election petitions in the House of Commons, with occasional contests both there and in the House of Lords over canals, roads, harbours, and market Bills, or upon competing schemes for supplying towns with water or gas. This did not suffice to keep more than two or three counsel in constant employment, of whom the leaders at this particular moment were the above-mentioned Mr. Adam, and that Mr. Harrison whom we have met with as a rival of Sir Frederick Thesiger.[2] Wood was led by Harrison in

[1] *Memoir of Lord Hatherley*, ii. 53.
[2] *Vide supra*, 94.

his first parliamentary brief, which was to support a new branch of the Stockton and Darlington Railway.

The railway was then traversed by cars drawn by horses, and had been the earliest used for passenger traffic by that method. The intent of the Bill was to increase the coal traffic to the river Tees, and it was vehemently opposed by Lord Wharncliffe, Lord Durham, and other coal-owners on the river Wear. Amongst other objections Lord Wharncliffe suggested before the committee of the Lords, through Mr. (afterwards Baron) Alderson, that according to the well-known case of Natusch *v.* Irving, decided by Lord Eldon, a company formed for one purpose could not use its funds for an extended plan of operation. I was left to fight the battle with Mr. Alderson, and contended that the rule had no application to the case of a corporate body applying to Parliament for an extension of its powers. The committee requested Lord Eldon to be good enough to attend one of their meetings, and he decided in favour of my view. This decision led Lord Wharncliffe to introduce the well-known standing order which bears his name, by which no new application can be made to Parliament by an existing company for extended powers, unless three-fourths of the proprietors present at a meeting convened for the purpose sanction the application.[1]

Another big fight in which Wood was engaged was the protracted struggle over the Bill promoted by the Corporation of London, in which his father's interest naturally procured him a brief, for making the approaches to London Bridge, and for raising funds for that purpose by continuing certain taxes on coals brought to the port of London.[2]

The Bill, he tells us, was vehemently opposed by the coal-owners, especially in the House of Lords, and only carried by the perseverance of the Duke of Wellington, then Prime Minister, who, with six of his colleagues, attended daily, and, on finding that delay was the aim of the opponents, actually obtained the leave of the Crown to keep Parliament sitting

[1] *Memoir of Lord Hatherley*, i. 62. [2] *Ibid.* i. 64.

till the Bill should be disposed of. During these proceedings I had frequent opportunities, both in conversation and in the course of the examination of witnesses, of observing the cool judgment and penetration of the Duke of Wellington. He would examine witnesses, who came to depose to the inconveniences of the proposed approaches, respecting the length of a waggon and horses, of a load of timber and the like, and the space required for turning, and constantly corrected their imperfect and inaccurate knowledge of the subjects.

The scale of remuneration at the Parliamentary Bar was so generous that within less than two years of his call Wood was engaged to a young lady, Miss Charlotte Moor, with whom he had been acquainted since boyhood, and on January 5, 1830, they were married. His father-in-law, Major Moor, was a retired officer who had displayed brilliant courage in the service of the East India Company, but whose military career had been cut short at an early age by a bullet from one of Tippoo Sahib's matchlock men. In his Suffolk home he took to literature and became the author of, amongst other works, the once famous 'Hindu Pantheon.' Major Moor had entered the army as a child of twelve, a date which was fixed indelibly in his memory by the fact of witnessing the loss of the 'Royal George' on August 29, 1782, as he was embarking with his fellow-cadets at Portsmouth. Few men have had more interesting links with the past than William Page Wood.

When responding to the toast of his health in his old college hall he once declared that the day on which he became a Fellow of Trinity was the proudest and happiest of his life save the day on which he ceased to be a Fellow —by his marriage. There is a story that 'forty years on,' when affairs of State had summoned him to Windsor as a member of the Cabinet, he received the royal command to 'dine and sleep,' and that with some embarrassment he begged to be excused on the ground that he had never been parted from Lady Hatherley for

so long. The Queen freely granted the dispensation, and in the following summer his wife was included in a summons to Balmoral. An unsuspected aspect of his character is revealed by the sonnets which he composed with unfailing regularity on the anniversary of their wedding day. One of his 'occasional' poems, written in May 1859, when both Darby and Joan were nearing the grand climacteric, is a touching tribute 'from any husband to any wife,' even though the third line may fail to satisfy an exacting ear.

I loved thee, dear, in spring—the budding may,
Fresh bathed in dew,
Twinkled not like thine eyes' sweet laughing ray,
When love was new.

I loved thee when the summer's sun was bright,
On ocean's wave,
For warmer far, and purer, was the light
Thy presence gave.

I love thee now in autumn, though the leaves
Be changed and sere;
Our love but ripens, like the mellow sheaves
From year to year.

I'll love thee yet, when winter's sky above
Is dark and chill.
Our new-born Lord then smiles, and even love
Grows lovelier still.[1]

Within a few years from his marriage his future prospects underwent a remarkable change. In 1836 the eccentric 'Jimmy Wood' of Gloucester, banker, draper, and miser, left a fortune amounting to nearly a quarter of a million sterling to his namesake the Alderman, with whom, however, he was in no way connected by blood. The legacy was indirectly due to the worthy Matthew's championship of Queen Caroline, which had brought him the acquaintance first of a sister of the testator and then of the testator himself.

[1] *Memoir of Lord Hatherley*, ii. 300.

There were several slips between the cup and the lip. The will was disputed and the circumstance that it had been prepared by a solicitor who benefited largely under it was a severe stumbling-block in the way of the devisees; the totally unexpected production of a codicil which materially varied the bequests introduced fresh complications.[1] After much preliminary skirmishing and the addition of a big Chancery suit, both the will and the codicil were rejected in 1839 by Sir Herbert Jenner Fust, the Judge of the Prerogative Court. It was a tremendous catastrophe for Sir Matthew Wood, as he had now become, not only to lose the fortune on which he had relied for the support of his baronetcy, but to be involved in costs of a ruinous amount. The stout-hearted citizen, however, was undismayed. He appealed at once to the Privy Council, and by the advice of his son William, upon whom the main responsibility for the conduct of the litigation out of Court had naturally been thrown, retained Sir John Campbell, then Attorney-General, and Mr. Pemberton Leigh.

Thanks to their 'wonderfully acute and searching examination of the facts,'[2] the tables were completely turned, and in the course of the year 1841 both the will and the codicil were successfully established,[3] though a subsequent decision of the House of Lords on appeal from the Chancery proceedings voided one of the largest legacies contained in the latter, and proportionately increased the shares of the beneficiaries under the will. Neither Sir Matthew nor William Page Wood ever believed that the codicil had been either made or executed by the testator, and they regarded it as a most

[1] Under the will itself the whole of Jimmy Wood's fortune went to his four executors, of whom the Alderman was one and the solicitor, Mr. Chadburne, another.

[2] *Memoir of Lord Hatherley*, i. 72.

[3] *Annual Register*, 1841, 292. Greville (2nd series, 28) says that the surprise at this result was great and general. The behaviour of the beneficiaries, including the Alderman himself, does not appear to have commended itself to Mr. Greville.

extraordinary and audacious forgery. The property which eventually reached Sir Matthew was substantially diminished by these changes and chances, but it came to about 150,000*l.*, including the estate of Hatherley in Gloucestershire.

The final victory meant of course a considerable addition to the patrimony of the Wood children, and on Sir Matthew's death in September 1843, William found himself independent of his profession. The first use he made of his altered fortunes was largely to increase those charities in which his generous spirit found its favourite outlet. He had no children, and neither he nor his wife possessed the smallest taste for the pomps and vanities that wealth can command. Few men have ever given, in proportion to their means, so freely or so gladly. It was a time of much church building and church restoring, often accompanied, alas, by a lamentable amount of vandalism. Hook's new parish church at Leeds, together with one in Wood's own parish at Westminster and another at Woodbridge in Suffolk, and the schools in Gloucestershire erected to his father's memory, were the immediate objects of his bounty.[1] In after years, on his appointment as Chancellor, he at once doubled all his subscriptions, and his biographer relates that, all through his life, his private gifts to needy and struggling individuals were beyond the bounds of calculation.[2]

Shortly before his marriage Wood had settled down in a house in Dean's Yard, from which he subsequently migrated to Great George Street. As he and his wife were seated in the dining-room of the former residence, one October evening in 1834, Mrs. Wood saw the pinnacles

[1] When the decision of the House of Lords in 1847 brought a fresh windfall we find him writing (*Memoir*, ii. 85) to Hook in the following strain: 'There are so many small things to be done with it that, after all, there will not be means, I fear, of any one great object being carried out. There is my school to endow at Hatherley, which will take about 3,000*l.* or more. Then I shall give 1,000*l.* to our parochial fund, which Dr. Wordsworth has so ably started and well supported, and then there come very numerous but yet pressing minor cases.'

[2] *Memoir of Lord Hatherley*, ii. 273.

of the Abbey gleaming, through the half-closed shutters, with an unusual light, and on rushing to the window they saw 'volumes of smoke and bursting flames towering over the House of Lords and bearing fearfully towards Westminster Hall.' The cradle of Parliaments was burning.[1]

During the rest of his life Wood was a resident citizen of Westminster, living under the shadow of that Abbey in which, to quote Lord Selborne, his 'comely and gracious presence' was a most constant feature. When Dean Stanley, who was only destined to survive him for a few days, heard of his death, he exclaimed that he felt as if a pillar of the Abbey had fallen.[2] Every day, wet or fine, on fair June morning or in November fog, Page Wood and his wife were to be found kneeling there side by side at the quarter to eight service. Not even the latest sittings of the Lords or Commons were allowed to interfere with his invariable practice. And the only occasion when he failed to make his attendance is said to have been the morning after the debate on the second reading of the Irish Church Bill, when he did not get home to what his biographer facetiously terms his dinner till past 3 A.M. As a teacher for more than forty years in the Sunday schools of St. John's, Westminster, he might fairly have claimed the medal for punctuality [3] and regularity. And many of the scholars owed not only their first start in life but a succession of acts of kindness to the interest he kept up in his old pupils.

The accession of his father to affluence and the revived prosperity of his family had an important bearing upon his professional plans. Hitherto the bulk of his income had been derived from work before committees, though he had been careful not to lose touch with Lincoln's Inn. But parliamentary practice was incompatible with a seat in the House of Commons, which he had always

[1] *Memoir of Lord Hatherley*, i. 223. [2] *Ibid.* ii. 261.

[3] On week-days the tradesmen in Parliament Street are alleged to have set their watches by him as he passed along.

kept in view, and, moreover, it so happened that the same year in which the validity of the Gloucester miser's will was finally established saw the appointment of two additional Vice-Chancellors. There were now five equity Courts in full blast, to any one of which a junior might be summoned at a moment's notice. The parting of the ways had been reached, he could afford to risk a temporary loss of fees, and without hesitation he abandoned his work at the Parliamentary Bar.

Any fears he may have entertained soon proved to be groundless, and in the first year after his choice had been made his 'legitimate'[1] business had doubled. In the summer of 1843 he felt justified in applying to Lord Lyndhurst for a silk gown. Much to his chagrin the application was passed over, while his junior, Mr. Parker, afterwards for a short time Vice-Chancellor, obtained promotion. Just at that moment Wood was heavily encumbered with private cares, as his father's executor; and the burden of equity drafting had become so intolerable that he made up his mind to quit the Bar rather than remain a stuff-gownsman. Through the good offices of Sir William Follett a gentle remonstrance was conveyed to the Chancellor, who at once expressed his regret for what he declared was a pure inadvertence. He promised that the earliest possible amends should be made, and in February 1845 Wood received his patent as a Queen's Counsel.

He attached himself to the Court of Vice-Chancellor Wigram, and soon came to share the leading work in it with Romilly, afterwards Master of the Rolls. In his published correspondence there are singularly few references to his profession, but the letters, it should be remembered, were mainly addressed to one clergyman and edited by another. Wood was an industrious and a successful advocate, careful in getting up his briefs, judicious in the

[1] Baron Martin once likened the Parliamentary Bar to the endearments of a mistress as compared with the 'lawful embraces' of Westminster Hall and Lincoln's Inn.

conduct of a cause, in every sense of the word a good lawyer. Though a vigorous and efficient speaker, he was neither subtle nor brilliant, and he was better adapted for the ordinary routine business of the Court than for those triumphs of refining, and 'distinguishing,' and cobweb-spinning in which some of his contemporaries excelled. He was the sort of counsel, prudent and laborious, upon whom solicitors instinctively relied. Lord Selborne[1] couples him with Rolfe and Pemberton Leigh as being of a temperament so happy as to gain all men's favour and esteem, adding that, though obliging and gracious in manner, he was capable of holding his own in all companies. Moral force counts for more at the Bar than is sometimes supposed.

Still the chances in the legal lottery are proverbial, and it may fairly be doubted whether he would have made his way to the Bench through a remarkably strong field had he stuck solely to the Courts; his actual approach was by the parliamentary avenue. Towards the close of 1846 a vacancy was imminent in the City of Oxford, and though the retiring member was a Conservative and the representation had been evenly divided for the last ten years, Mr. Page Wood, as he was now generally referred to, was, at the general election in August 1847, for some obscure reason returned without a contest, and with a Liberal colleague. Nor was he compelled to submit to that ordeal during his membership of the House of Commons; few lawyers have been so fortunate.

As became the son of his father, he was an advanced Liberal, indeed, for that epoch, a Radical, though his respectability and general blamelessness saved him from what was then a term of reproach; the most dangerous of his tenets were the extension of the suffrage and vote by ballot. On the other hand, he was a devoted Churchman and a friend of Dr. Hook, who was suspected of Puseyism; and at Oxford, as in other cathedral cities, the Nonconformists were the backbone of the Liberal party.

[1] *Memorials, Family and Personal*, i. 374.

But Wood's frankness disarmed them, and his entire disapproval of 'any political disability whatever founded on the religious opinions of the citizens of a free country' was held to atone for his support of the Establishment. One of his ultra-Protestant supporters even admitted that Dr. Hook was 'a sort of demagogue of the Church.' [1]

[1] *Memoir of Lord Hatherley*, ii. 82.

CHAPTER XVII

LIFE OF LORD HATHERLEY FROM HIS ENTRY INTO PARLIAMENT TO HIS DEATH

1847–1878

WOOD entered the House of Commons as a singularly independent supporter of Lord John Russell. He had been brought up in the faith that there was no very great difference between a Whig and a Tory; he believed in 'measures, not men,' and he had sturdily refused to be fettered by electoral pledges. The contagion, however, of our party system, and the stern insistence of the party whips, do not give much scope for individualism, and it was not long before the member for Oxford City was toeing the line with the other Ministerial recruits; yet his first speech, made within a few weeks of taking his seat, was in defence of the Church of England, and a plea for the then extremely unfashionable notion of the extension of the Episcopate.[1] He strongly opposed the Deceased Wife's Sister's Bill, and he was accustomed, according to Dean Stephens,[2] to say that he would rather hear of 300,000 Frenchmen having landed at Dover than of this amendment of the marriage law. But he was equally vigorous in his support of Lord John Russell's Bill for the admission of the Jews into Parliament. On the defeat of that measure he maintained the startling theory that even under the existing law it was competent for the swearer to omit the words 'on the true faith of a Christian' from the oath of abjuration. Acting on this

[1] Nov. 1847 (Hansard, xcv. 1109).
[2] *Memoir of Lord Hatherley*, ii. 27.

view he brought up to the table of the House of Commons, July 26, 1850, Baron Lionel Rothschild, who had twice been elected for the City of London, and moved that he should be allowed to take his seat, a proposition which was negatived, however, by a substantial majority.

In a Parliament where parties were very evenly balanced Wood made his mark below the gangway as a capable and vigorous debater. His most successful achievement was to carry by a majority of one the appointment of a committee to consider the complaint of the electors of Stamford, who were so ungrateful for the interest taken in their conduct by the Marquess of Exeter that a third of them had petitioned that the borough might be disfranchised.[1] In 1849 he accepted from Lord Campbell, then Chancellor of the Duchy, the post of Vice-Chancellor of the County Palatine of Lancaster. This office had long been treated as a sinecure, and Wood steered a Bill through Parliament,[2] which had the effect of making the Court that efficient and convenient tribunal for administering equity in Lancashire which it has ever since remained.

In March 1851 the resignation of Lord Langdale and the appointment of Sir John Romilly to succeed him at the Rolls caused a vacancy among the law officers, and Wood received the offer of the Solicitor-Generalship. The immediate prospect was far from inviting, for a few weeks earlier the Whigs had been compelled to tender their resignation, and they were only holding office through the disinclination of Lord Derby to experimentalise in Cabinet-making. None the less Wood accepted the preferment, but only on the personal assurance of the Premier that he had resolved to introduce a Bill for the further extension of the parliamentary franchise.[3]

[1] *Memoir of Lord Hatherley*, ii. 26; *supra*, 99.

[2] 13 & 14 Vict. c. 43.

[3] Though Wood remained faithful all his life to the old-fashioned Liberal creed, he had small sympathy with modern developments, as appears from a letter of his written in October 1851. 'I look on Kingsley as the forerunner of a Jacobin persecution, if we are not able

The course of the one session during which Sir William Page Wood, as he had now become, sat on the Ministerial front bench, was not destined to be interrupted by the passage of a Reform Bill. The outcry against Papal aggression, in which the Bar joined with peculiar heartiness, led to the Ecclesiastical Titles Bill. While still a private member, Wood, together with Mr. Roundell Palmer, had been consulted by the Bishop of London (Blomfield) as to the advisability of legislating on the subject,[1] and he took a leading part in driving through the House of Commons the forcible-feeble measure which was the outcome of the national indignation. He heartily approved of the Bill as a most becoming declaration of adherence to the Protestant religion, but the forty-eight nights' warfare with the Irish members was intolerably irksome to him, and contributed to his growing anxiety for freedom. Far more congenial were his labours on behalf of those measures of practical law reform which so honourably distinguished the brief Chancellorship of Lord Truro.[2] He took charge of the Bill for constituting the new Court of Appeal, and had a share in the drafting of the Bills for the abolition of the Masters' office and the simplification of Chancery procedure, but his labours were cut short by the defeat and resignation of the Government in February 1852.

In the preceding August he had been offered a Vice-Chancellorship by Lord Truro, which he was anxious to accept, but he bowed, as Wilde himself had done in similar circumstances,[3] to the request of the Prime Minister, not to desert him. Lord John was about to redeem his pledge as to Parliamentary Reform, and he wanted the

by God's blessing to ward off the blow by timely instruction of our people. There is no such ferocious monster as the co-operative fraternal club, who cordially hate everyone that is richer than their fraternity, and when they have slain the capitalist, find that the golden eggs have vanished' (*Memoir of Lord Hatherley*, ii. 119).

[1] Lord Selborne, *Memorials, Family and Personal*, ii. 79.

[2] *Ante*, vol. i. 456.

[3] *Ibid.* 442.

assistance of his Solicitor-General. The Bill, when it saw the light, was one of those characteristic compromises which please nobody, but Wood was relieved of all anxiety on that score by the dissipation of the Whig Ministry into space. The retiring Premier wrote him a kind letter expressing regret that he had deprived him of a 'quiet and honourable distinction,' and expressed the prophetic hope that he might live to see him 'run a career of fame and honour for which your abilities and character so well fit you.' In his letters to Hook, Wood speaks of Lord John in terms very different from those which are found in the correspondence of some of that nobleman's colleagues: 'I am sure if you knew him you would be enchanted with him; he is thoroughly frank and really very tender.'[1] Wood's sunny and simple disposition must have been infectious.

The quiet and honourable distinction was not long deferred. While Lord Aberdeen was forming his Coalition Ministry another Vice-Chancellorship fell vacant, and though Wood had the option of returning to office as Solicitor-General, he preferred to claim his discharge. The close attendance at the House of Commons was not only a severe tax upon his physical strength, but, as he told a friend, it condemned Lady Wood to an amount of loneliness which he felt to be unfair upon her.

Sir William Page Wood was Vice-Chancellor for sixteen years, and his judgments are to be found in the reports of Kay and Johnson and Hemming. Tolerant and courteous to the weaker vessels, he was emphatically a strong judge before whom the very elect of the Chancery Bar preferred to practise. Cairns, Rolt, G. M. Giffard, W. M. James, and Amphlett, all in their turns Lords Justices, attached themselves to his dingy little Court in the purlieus of Lincoln's Inn, and no reputation, however high, no personality, however formidable, was able to impose a sophistry upon him or shake him in a conclusion which he had deliberately formed. He was essen-

[1] *Memoir of Lord Hatherley*, ii. 117.

tially, to repeat a phrase of Bagehot's which I have quoted elsewhere,[1] 'a judge for the parties' who aimed at doing immediate justice rather than at enriching our legal literature. The appeals from his decisions were few in number and seldom successful, and a writer in the 'Solicitors' Journal' declared that on the judgments of Vice-Chancellor Wood there was undoubtedly placed an amount of reliance unshared by any other living judge.[2]

He possessed, however, the defects of his qualities. 'He was the delight,' says a not very kindly critic, 'of the circle of painstaking, plodding persons who liked a judge to listen and to notice all their arguments in deciding.'[3] The practice of never giving a written judgment rendered him discursive and prolix, and his eagerness to master every detail of the case was reflected in the pains he took to explain at length the various fluctuations of opinion which he had experienced at different stages of the hearing. He justified himself on the twofold ground that the writing of judgments was injurious to his eyesight,[4] and that delay was more mischievous to the suitor than any want of precision in expression or polish in style. But though Bench and Bar united in condemnation of the tone and manner in which, on an occasion that has already been referred to,[5] Lord Campbell thought it his duty to administer rebuke to the Vice-Chancellor, his observations were not without substantial truth. After affirming in every particular Wood's decision in a highly complicated partnership dispute,[6] Campbell went on to say that he had laboriously travelled through the decree and the judgment occupying forty-six pages of a huge quarto volume closely written.

[1] *Ante*, vol. i. 143. [2] Quoted in *Memoir of Lord Hatherley*, ii. 59.
[3] *A Generation of Judges*, 143.
[4] His weakness of vision was the thorn in the flesh which ultimately caused his retirement (*infra*, 374).
[5] *Supra*, 214.
[6] Burch *v.* Bright; see *Saturday Review*, December 29, 1860.

Judgments of such prodigious length, instead of settling, have a tendency to unsettle the law. The verdicts of juries are generally acquiesced in, perhaps because they are given without reasons. An equity judge who has to determine questions of fact cannot follow this course, but there is no necessity for his stating from his tribunal all that passed through his mind during his deliberations with all his doubts and waverings.

A fairer and more generous estimate is given by Lord Selborne, who says that 'his unambitious temperament made him perhaps too negligent about the form of his judgments, which were generally not committed to writing.' And if they were often discursive and wanting in conciseness, they were almost always sound and accurate. The real sufferers from Wood's peculiar form of delivering judgment were the shorthand writers, who 'toiled after him in vain, desperately endeavouring to fix upon paper the stream of broken words which he poured forth, and finding often when they had done so that they had only got a string of unfinished sentences.' [1]

His relations with the counsel who practised before him were uniformly of the pleasantest. One little rift in the lute, and one only, is recorded. The Vice-Chancellor had ventured to express an opinion that barristers on the equity side, where evidence was still for the most part obtained through written interrogatories, were less expert in examination and cross-examination than their brethren of the common law. This observation seems to savour of a truism, and a few years later Mr. Chapman Barber, in his cross-examination of the Tichborne claimant before Master Roupell at the Law Institution, showed how helpless a learned equity practitioner could prove himself when confronted with a sturdy impostor.[2] But

[1] *A Generation of Judges.*

[2] The examination took place July 30, 1867; see my *Famous Trials*, p. 230. Serjeant Ballantine tells (*Reminiscences*, 88) how he once had to cross-examine a plausible, but not very truthful, witness before

the counsel in Wood's Court took umbrage at the insinuation, and someone, whose identity remains undisclosed, was responsible for the following mock chapter from Froissart:

How William de Bosco, one of the Viscounts of the County of La Chancellerie, in Guienne, was forced by his men-at-arms to do penance in the hall of his own castle for misprision of them in saying that they could not shoot with the long bow so deftly as the Archers of Westminster.

William de Bosco (otherwise called 'Le Bien Aimé') was Viscount of a Viscounty of La Chancellerie in Guienne. He was a good knight, fearing God and loving equity, and he kept his viscounty in peace and order with the aid of many valiant knights and stout squires, who had conquered and subdued the said County of Chancery unto their own use and profit from out of the fertile plain or debateable land lying between Poitou and Guienne, known as the 'Pays de Droit' or 'Pays Legal,' called by the English 'The Law Countries.' These had formed themselves into a gallant Fraternity called 'Les Chevaliers du Grand Sceau,' for that at their solemn jousts fought 'à l'outrance' (sic) *with sharp swords and pointed lances, they had a great seal for their guerdon of honour, and for their Grand Master, Count, and Champion, whosoever of them could achieve the same seal; to whom they gave the style and title of 'Le Seigneur du Grand Sceau,' a badge of honour greatly esteemed and had in renown of all noble companies and valiant souls, and which whosoever won and fast held, was thereby invested and instituted into the said county, and thereupon became and was styled the 'Count of Chancery.'*

One day it chanced, while the companions were tilting and jousting before the Viscount after their manner, the said Viscount was heard to say 'By the Great Seal' (*for so the knights swore*) *'yonder gentlemen, albeit good men-at-arms, can scarce use the long bow like the Archers of Westminster.' The good Viscount* (*albeit he spake God's truth herein*) *spoke this almost under his breath, insomuch that John de Wyckins,*[1] *a Squire who stood by, was wont to deny stoutly that he ever spake any such words, or so that any that had not very long ears could in anywise have overheard them. Nevertheless, the said words*

Vice-Chancellor Page Wood. 'His Lordship was very much struck with the ingenuousness of the young man, and evidently thought that he had been exposed to a cruel ordeal. As the witness himself was going out of Court he was heard to whisper to a friend, "Why, the old gent believed every word I swore."' The term applied to his Lordship, adds the Serjeant, was not of so refined a character.

[1] For John Wickens, afterwards Vice-Chancellor, see *infra*, 408.

being publicly reported and noised abroad did not fail to breed great debate and despite among the said Knights of the Great Seal, who were well known throughout all the Law Countries, no less for their prowess than for their 'outrecuidance.' They said within themselves, 'Surely all men will hold us for nought when our own Viscount William himself thus speaks of us! Alas for the honour of "Le Grand Sceau." That good Knight and valiant Captain, our noble Grand Master, Frederick Count of Chancery (whom God preserve), who did battle against the pagans at Copenhagen,[1] and by the side of these very Archers of Westminster fought his way into the Court of their palace of yore, hath ever still a kind word for a comrade, is himself a right good archer, and to this day he loveth a Westminster man; had he said these words we would have borne them; but as for Viscount William, we will deal roundly with him, and will soon see of what stuff he is made.'

They then communed among themselves, and resolved and determined by the voice and consent of all, that three comrades of the Grand Sceau should be deputed to deal with Viscount William therein, on behalf of all, and to compel him to repent and to do penance in the Hall in respect of the aforesaid words, or otherwise to put him to fine and ransom at their pleasure, and to handle him so that the honour of the fraternity should be not only preserved and augmented, but that they should thereafter acquire great spoil and profit out of all the Law Countries.

These knights were, Sir Hugh (surnamed 'L'Irlandais'), Sir Richard de Aylesbury (called 'Sans Peur') and John Rolt (otherwise de Gloster). These three companions were the three best lances of the brotherhood, and it was often made a question among the Knights which of them should carry off 'Le Grand Sceau,' and would reign over the rich county of Chancery, when the tenure of the good Count Frederick (whom God keep) should finally cease and determine.

These three knights, then, having been solemnly sworn upon the Great Seal to do their devoir, made repair to the good Viscount, and opened the matter to him, as had been theretofore determined. They found the good Viscount in a very pious and discreet temper of mind, willing devoutly to make his peace with God and the good knights, and protesting in all sincerity 'that the honour of the Great Seal was as dear to him as his own, that his words (so complained of) escaped him without reflection, or intention of staining the renown of the Confraternity; that, as for the men of Westminster, he did not doubt but that if they were ill-advised enough at any time to enter into the Court of Chancery with intent to win spoil or honour therein, his own companions, the good Knights of the Great Seal, would shoot both faster and further, with bolt or shaft, at butts or rovers, and would soon have the upper hand

[1] *Vide supra*, 80.

of them all—aye, even if it were Sir Fitzroy de Kelly or Sir Edwin James themselves, in their proper persons.'

Whereupon the said three Knights finding the said Viscount so piously minded, did say unto him, 'Sir William, it behoves you, who know so well how to do Equity, to repeat this in proper form and style, to wit, in guise of a penitent, in the Hall of the Great Seal and before all the Knights thereof in Chapter assembled, and clad in the robes of the Order; for so it hath been concluded and decreed by all the Knights for their further relief in the premises.'

'By the help of the Great Seal' (quoth Sir William) 'this will I do in all truth and humility, and they shall have such further relief therein as they pray.'

So the three Knights departed from him right glad and merry in heart, and did repeat unto the companions what had been therein done and concluded, whereof they had great laud.

So on the morrow the Hall was full of the Knights arrayed in their robes, and of many of their squires, pages and followers, marvelling what would thereupon ensue. Sir Hugh d'Irlandais and Sir Richard de Aylesbury were hindered by divers weighty affairs; but John de Gloster sat in the front rank, solemnly arrayed in his silk robes. Ah me! but it was pity of the good Viscount William de Bosco! He stood barefooted and bareheaded, in his shirt, with a girdle of red tape round his loins, and a taper of full six pounds weight in his hands. His secretaries and his ushers were decently apparelled in guise of mourners (as well became them). Then the trumpets blew a 'mort,' a long blast, and the crier made his 'oyer,' and the good Viscount spake these words in a clear and manly voice, not without many sighs and inward groans.

'Here stand I, William de Bosco, Viscount of the Viscounty of the County of Chancery, a humble comrade and brother of the Great Seal, and a true liegeman of the Most Noble Grand Master of the said Great Seal, Frederick Seigneur du Sceau, and Count of Chancery, whom God preserve. Whereas it hath been reported that I have spoken doubtingly of the skill of the valiant Knights of the Great Seal in archery, and have compared them, to their prejudice and disparagement, with the archers of Westminster therein; now I do hereby publicly and ex animo renounce, detest and abjure from henceforth and for ever, these detestable, damnable, odious and heretical doubts and comparisons aforesaid; and I do freely, fully, and voluntarily profess, declare, and openly say and affirm that each and every Knight and Companion of the Great Seal is ex ratione sigilli, et ipso facto, really, truly, naturally and bodily, an able, capable and efficient Archer, whether on foot or on horseback, in hall or field, with long bow or short bow, in light or in darkness, in wet or in dry, by night or by day, sleeping or waking, fasting or feasting, in Term or out of Term, in Chancery or out of Chancery, in North or in South, any Law or Equity to the contrary in anywise

notwithstanding; and I make this declaration in the natural, legal and equitable sense of the words, irrespective of reason or common sense, putting my trust in the Great Seal only.'

The Knights and followers thereon made their obeisances, and by gestures showed their great contentment (all shouting or noise being forbidden by the Statutes of their Order). John de Gloster (the good Knight) spake a few comfortable and courteous words (as was his wont) to the good Viscount, and John de Wyckins openly declared and cried out 'God help the good Viscount. I was present when thou spakest the words impugned, and I vow by the Great Seal, that they were spoken as it were aside, unadvisedly, without forethought or malice, and so gently that for my own part I never conceived they could be drawn into question.' 'Gramercy, good John' (quoth William) 'thou didst truly hear, mark and well digest the said words.' With that they all avoided the Hall.

Notwithstanding these things, Sir Fitzroy de Kelly (called 'Le Grand Procureur') and Sir Edwin James (the Less),[1] and other archers of Westminster and good Knights would often say and maintain that Viscount William spake God's truth herein, and that he had but scant justice at the hands of his own companions, and this they would offer to prove on the bodies of any of the said Companions before our Lady the Queen herself at Westminster whensoever.[2]

The years of Wood's Vice-Chancellorship passed quietly and uneventfully by. His leisure was largely utilised in the public service, as a member of various Royal Commissions, amongst others the one of which the divorce legislation of 1857 was the outcome. In strong contrast to most of his fellow Churchmen he was in favour of the Act, though I must own to being fairly baffled by the following sentence, in which he commented upon its working :[3] 'The great influx of business to the new Court arose much more from unremedied injunctions than from wanton levity of conduct.' He served, moreover, with Lord Wensleydale and Sir Lawrence Peel in the delicate task of adjudication on the long standing claim of the Crown of Hanover to certain jewels

[1] In distinction from 'Big James,' the future Lord Justice. The constellation of the present Lord James of Hereford was at this date still below the horizon.

[2] The above is transcribed from the *Memoir of Lord Hatherley*, ii. 314. I have not been able to discover the original.

[3] *Memoir of Lord Hatherley*, i. 96.

which had become attached to the Crown of England. And he was a prominent member of the Judicature Commission, out of which sprang the Acts of 1873 and 1876.

Unlike the majority of lawyers, Wood found recreation neither in field sports nor in country pursuits. For the former he was disqualified by his defective eyesight,[1] but, in common with Lord Coleridge, L.C.J., he held views strongly antagonistic to the Game Laws, and he regarded hunting, shooting, and coursing with equal abhorrence. A rapid and vigorous walker, his favourite, indeed his only, pastime was swimming, which he kept up till a late period of his life. Though no cricketer himself, he believed in it, like a good Wykehamist, as the king of games; gymnastics he distrusted as tending to 'strain rather than develop the muscles.' Outside of Court his main sphere of activity was in the parishes of St. Margaret and St. John, Westminster, where schools, churches, free libraries, and every charitable cause found warm support both in purse and person from Sir William and Lady Page Wood; he took, moreover, a warm and active interest in the National Society and in other official agencies of the Church of England. Always a wide reader and a singularly well informed man, he is only credited, in addition to the translation from Bacon above referred to,[2] with one serious contribution to literature, a thin volume published in 1867, 'The Continuity of Scripture as Declared by the Testimony of our Lord, and of the Evangelists and Apostles.' It is a monument of simple piety, inspired by alarm at the mutterings of the higher criticism, and worthy of a place on the bookshelf near to Gladstone's 'Impregnable Rock of Holy Scripture.'

The succession of Cairns to the Woolsack in March 1868 made a vacancy in the office of Lord Justice of Appeal

[1] Apart from the extreme short sight with which he had been afflicted since infancy, Wood's physique was excellent. He shared with some of his predecessors the power, so invaluable to a barrister, of going for long periods with little or no food.

[2] *Supra*, 343.

to which the new Chancellor promptly appointed Wood. The choice was universally applauded at Lincoln's Inn, and Lord Justice Selwyn, who had recently been raised straight from the Bar by Lord Chelmsford, insisted that his new colleague should act as the senior member of the Court. Wood's utmost ambition, if we can apply the term at all to one so entirely free from self-seeking, was amply gratified. He had refused a life peerage when it was offered him by Lord Cranworth during the turmoil of 1856, and he had deliberately, and as he deemed for ever, turned his back on the arena whence cometh political preferment.

In December of the same year he received, to his intense astonishment, the offer of the Great Seal from Mr. Gladstone, who had just succeeded to power with a huge majority at his back. The principal measure to which the Premier stood pledged was the disestablishment and disendowment of the Irish Church. In this course Sir Roundell Palmer, the last Liberal Attorney-General, refused to follow him.[1] Westbury's resumption of office was impossible, Cranworth was recently dead, there were objections of one kind and another to both Sir Alexander Cockburn and Lord Romilly. Lord Justice Wood possessed, in a full degree, the qualifications for the post: he was a sound lawyer, an excellent judge, and enjoyed the reputation of having been, fifteen years earlier, an effective debater in the House of Commons. While his attachment to the Church of England was beyond cavil or suspicion, he had, at the outset of his public life, declared himself opposed to the continuance of the Irish ecclesiastical establishment, and he was not the man to change an opinion once formed.[2] For the present conjuncture he was an ideal Chancellor. The worst that could be said against him was Westbury's complaint,

[1] *Vide infra*, 404.

[2] Like many Radicals, Wood was intensely conservative in private and personal matters. His biographer says that he was almost the last man in London to discard the blue dress-coat with gilt buttons that had been *de rigueur* in his dancing days.

LORD HATHERLEY

From the picture by George Richmond, R.A., in the National Portrait Gallery

'He is a mere bundle of virtues without a redeeming vice.'

Wood had neither desired nor expected the dignity. 'I had no thought of my voice ever reaching beyond Lincoln's Inn,' he wrote to Mr. Childers;[1] and his *nolo episcopari* was most genuine and earnest. In an interview with Mr. Gladstone, he urged the names and claims of several others, and even suggested that the Seals should be put in Commission. The Premier was obdurate, and on December 9 Lord Hatherley, to call him by his new title, attended at Windsor with the other incoming Ministers. The President of the Board of Trade was John Bright, who long ago had been so charmed with the Radical sentiments of the member for Oxford that he had expressed the hope that if ever he was called upon to serve as a Minister of the Crown, he would find Mr. Page Wood as his Chancellor. In the train down from Paddington, Mr. Bright reminded Lord Hatherley of the wish so happily fulfilled.

Painstaking and conscientious to the last degree, it cannot be said that Lord Hatherley is one of the great figures among the Victorian Chancellors. His care, his patience and his acuteness, were displayed to better advantage as a judge of first instance than as the head of the ultimate Court of Appeal. He was neither a great master of equity like Cottenham or Cranworth, nor possessed of the deep and subtle intellect of a Cairns or a Selborne. Enough has been said of the defects of his judgments, and sound and sensible though they are, his decisions do not contribute greatly to the volume of English law.

In the House of Lords he made some useful speeches, and he presided with urbanity and dignity over its proceedings, though here, as in all other departments of his work, his eyesight was a grave hindrance to him. But there was a certain want of elasticity in his mind, and an inability to be convinced that anything approved

[1] March 2, 1869 (*Life of the Right Hon. H. E. C. Childers*, i. 148).

by his conscience could be wrong, which betrayed him into an occasional irritability, the manifestations of which were singularly alien to his nature. As a counsellor in the Cabinet Gladstone has bestowed the highest praise upon him. His speech on the second reading of the Irish Church Bill [1] was not only a vigorous, and at moments almost an eloquent vindication of the Government, but it produced the very effect upon which the Premier had reckoned. Approval from one whose Churchmanship was unimpeachable, and whose charity and piety were undeniable, made a testimonial the value of which could not be exaggerated. His predictions, alas, as to the consequences of Irish disestablishment have been verified as little as the Whig vaticinations on the passing of Catholic emancipation.

> I believe that this measure will do as much to knit into one body of Christians, united against their spiritual foes, the professors of various shades of religious opinion, as by the affection and harmony resulting from the measure it will enable the State to show a firm front to its external foe.

The speaker lived to see the Forster Coercion Act, and the introduction of the verb 'to boycott' into the English language.

Lord Hatherley played his part in piloting the other great Gladstonian Bills through the Lords, the Irish Land Act of 1870, the Education Act of 1871, the Ballot Act, and the University Tests Act, and he strongly supported the exercise of the Royal Prerogative by which purchase in the Army was abolished. His most notable appearance in debate was in connection with the so-called 'Colliery explosion' which nearly blew up the Government eighteen months before its time.

In the session of 1871 an Act had been passed authorising as a measure of temporary relief the appointment of four salaried members to the Judicial Committee of the Privy Council, who were to be qualified by being,

[1] Hansard, cxxvii. 247.

or having been, judges of the Superior Courts of Westminster or Indian Chief Justices.[1] Sir James Colvile and Sir Barnes Peacock fulfilled the latter requirement, Sir Montague Smith allowed himself to be translated from the Common Pleas, but to find an occupant for the fourth place proved a task of almost insuperable difficulty. By a piece of ill-judged economy, which had been pointed out to the Chancellor by Lord Chelmsford while the Bill was under discussion, no provision was made for the clerks of the new Privy Councillors. Mr. Justice Willes and Baron Bramwell both in turn refused the offer on the express ground that they could not turn their officers and friends adrift after long years of faithful service, and that they were not prepared to provide for them out of their own pockets. And there was reason for believing that Mr. Justice Blackburn and Baron Martin entertained the same feelings.

Lord Hatherley got the idea into his head, quite erroneously, according to Cockburn,[2] that there was an organised strike among the judges, and was nettled at the way in which the newly created post was being treated. He communicated with the Prime Minister, who promptly decided that the appointment must not be hawked about, and he offered it at once[3] to the Attorney-General, Sir Robert Collier. That excellent lawyer pointed out that in order to be qualified he must first be made a judge. To Mr. Gladstone nothing seemed easier; the elevation of Sir Montague Smith had caused a vacancy in the Common Pleas, and into that vacancy Sir Robert was thrust. He sat in Court for two days, borrowing his predecessor's robes for the purpose, and then disappeared behind the portals of the Judicial Committee. Hatherley, with whom rested the responsibility for filling up the puisne judgeship, had viewed this course with some dismay. 'It would hardly do,'

[1] 34 & 35 Vict. c. 91.
[2] *Life of Lord Westbury*, ii. 226. [3] October 1871.

he objected to the Prime Minister, but nevertheless he gave it his final approval.[1]

That it was a distinct evasion of the statute seems scarcely to admit of argument. The Bill had been prepared by the Government draftsmen, and was free from all ambiguity; barely two months had elapsed since the royal assent had been given to it. Had it been in contemplation to render members of the Bar eligible for these statutory offices the Act would have said so. The high qualifications of Sir Robert Collier, and the fact that he proved a most efficient member of the Board, are beside the point altogether.

Westminster Hall was up in arms; the dignity of the Common Law Bench was considered to have been outraged by turning it into a conduit pipe for conferring a colourable qualification, and Cockburn had the vast majority of the legal profession behind him when he addressed an eloquent, if somewhat rhetorical, remonstrance to Mr. Gladstone. The Premier curtly transmitted it to the Chancellor, as being the person concerned with the main overt act, and Lord Hatherley replied to the remonstrant, almost as briefly, that he had acted advisedly in appointing Collier, and with a full knowledge that he was about to be transferred to the Judicial Committee.

The Chief Justice was exasperated by what he called 'the very uncivil and contemptuous letter' of the Chancellor, and he left no stone unturned to get even with him. As far as so good a man could cherish resentment, Lord Hatherley felt it against Sir Alexander Cockburn. Except on the one point of politics the two were as far asunder as the poles. The latter's conspicuous disregard of decorum in private life not only offended Lord Hatherley's righteous soul, but rendered particularly galling the tone of rebuke and reproof exhibited in the

[1] See Morley's *Life of Gladstone*, i. 1017; Selborne's *Memorials, Personal and Political*, i. 197; *Life of Lord Westbury*, ii. 222; *Memoir of Lord Hatherley*, ii. 212.

letter of protest which Cockburn now printed in the *Times*.[1] And the Lord Chief Justice on his part had an old grievance against the Chancellor. In 1866 he had determined that the prominent part taken by Edmond Beales in political agitation, and his share in the Hyde Park riots of that year, disqualified him from performing the duties of a revising barrister for Middlesex, and accordingly had refused to reappoint him. This action was regarded by Lord Hatherley as an act of tyranny, and he had only been a very short time in office when he made Beales a County Court Judge by way of reparation. This practical comment on his discretion made Cockburn, not unnaturally, very angry, and a wordy warfare was waged in the press and in pamphlets, Lord Hatherley addressing himself in particular to Chief Justice Bovill.

When Parliament reassembled in February 1872, votes of censure on the Government were proposed in both Houses, for the Opposition had recognised their opportunity, and the non-Ministerial press was all but unanimous in condemnation of what, by an abuse of language, was freely denominated a job. Cockburn, who had himself systematically declined a peerage, was urgent to drive Westbury and Cairns into the fray, for they both shared his disgust at the transaction. But the motion in the Upper House was actually made by Earl Stanhope, who asked the Peers to declare that the circumstances attending Collier's promotion were 'at variance with the spirit and intention of the statute, and of evil example in the exercise of judicial patronage.'[2]

The mover fell into the error of making a personal attack upon the Chancellor; and the example was followed up by Lord Salisbury in one of his splenetic moods. This was the happiest turn that the debate could have taken for Hatherley, whose integrity was beyond

[1] In the previous year Cockburn had published an 'open letter' to the Chancellor on the subject of his projected Judicature Bill (*Our Judicial System*).

[2] Hansard, ccix. 376.

reproach, and though Lord Portman had somewhat wearied the House by 'tributes to his public and private character repeated at all the pauses of his speech,'[1] no one seriously believed him capable of swerving a hand's breadth from what he believed to be right. There was a spirited skirmish over the absent *corpus* of the Lord Chief Justice between the Duke of Argyll and Lord Westbury, in which the latter peer incidentally flouted Mr. Justice Willes very much as Campbell had flouted Sir William Page Wood. He advised Lord Hatherley to cite a certain letter written by that profoundly learned judge, as an illustration of the need for the fusion of law and equity, and he suggested that Sir Roundell Palmer might quote it as a proof of the necessity of instituting a better system of legal education.[2]

Then the Chancellor made his defence. He was labouring under strong emotion, for some of the imputations had stung him cruelly. It was a real shock to him to find himself 'charged with a dishonest act, with having distorted an Act of Parliament for his own purposes.' The *mens conscia recti* has its corresponding weakness;. it is apt to regard criticism as the direct work of the evil one. Long years in the dignified seclusion of Lincoln's Inn had rendered Lord Hatherley somewhat too thin-skinned for a politician. He was unaccustomed to interpret the amenities of debate in that purely Pickwickian sense which the atmosphere of Westminster engenders. And he was prone to regard

[1] *Per* Lord Salisbury.

[2] 'A letter which unhappily shows that, though his experience as a judge in Courts of Common Law may be great, he is standing on a plain below the level of the higher regions of justice, and knows nothing at all of the higher maxims of Equity by which the Common Law is controlled.' It required no small effrontery for one who had left office in the circumstances which had clouded Bethell's last days on the Woolsack to close his speech with this mellifluous sentiment: 'I am sincerely anxious that the Lord Chancellor may succeed in satisfying your Lordships that we are in error in condemning this proceeding, for nothing would please me more than that the great reputation of the Lord Chancellor should not be tarnished by any act which you may regard as open to censure' (Hansard, ccix. 424).

the common form accusation of political dishonesty as an imputation on his private honour. On the present occasion he had been rudely handled, and he gave back effective blows. As a personal vindication of the Prime Minister and of himself, and as an exposition of the fitness of Sir Robert Collier for the post, his speech was conclusive, but the *gravamen* of the charge, the evasion of the Act of Parliament, he never really touched. Cockburn's intervention in print on behalf of the dignity of the Bench gave him, however, an opening for effective retort.

The dignity of the Bench is best maintained by hearing first all what persons have to say—by keeping yourself on your guard and forming a covenant, as it were, with yourself to let the matter be fully placed before you, ere you allow yourself even to form an opinion, much less to pronounce a judgment upon the subject. During the forty-four years I have been at the Bar, and the nineteen I have been on the Bench, I have studied those principles. It is impossible for any man to say of himself that he has always successfully acted on them, but at least I have never lost sight of them. At the Bar I never had an altercation with any human being, and I certainly shall not begin with the Lord Chief Justice in the public newspapers.

He denounced the whole debate, and not without considerable show of justice, as a mere party manœuvre, and he declared that it would require much more than a hostile vote on the part of their Lordships to drive him from office:

My Lords, I tell you plainly, I will hold my ground; I will not quail till my profession tells me I ought, or at all events until the House of Commons shall censure me for what I have done.[1]

[1] In the course of his defence Lord Hatherley made some almost inconceivable mistakes of fact. In repelling Lord Salisbury's attack upon his appointment of Mr. Beales he put the emoluments of a revising barrister at between 700*l.* and 800*l.* a year, the real figure being 200*l.*, with travelling allowances; and he represented Beales as having abandoned his practice in the Courts of Chancery to discharge duties which occupied about three weeks in the dead of the Long Vacation.

The motion in the Lords was lost by only two votes, but in the Commons, to whom the Chancellor had appealed, the Government obtained a majority of twenty-seven, largely procured by a speech from Sir Roundell Palmer, whose powers of advocacy were seldom more severely taxed or more admirably displayed.

Lord Hatherley was not destined to endure much longer the pains of office and the imputations of unfriendly critics.

All his life, says Dean Stephens, 'he had been dependent on one eye only; the other was what oculists term a "conical eye"; which, owing to undue convexity, was so excessively near-sighted as to be practically useless.'[1]

It is marvellous that, thus burdened, he should have been able to get through the vast amount of work demanded of a successful lawyer who was also for some years a prominent politician. And as far back as 1869 he had qualms as to whether he ought not to resign on account of the difficulty he experienced in reading papers in the House of Lords. 'I certainly feel inclined,' he wrote, 'to apologise to Roundell Palmer and others for blocking the way, but it will not be for long.'[2] Unknown to him a cataract had for some time been forming on the sound eye, and it was with ever increasing difficulty that he struggled along. In June 1872 the judgment which he had prepared in the case of Sheppard *v.* Bennett[3] was delivered for him by the Archbishop of York, and

[1] *Memoir of Lord Hatherley*, ii. 241.

[2] *Ibid.* ii. 244. A somewhat similar apology is recorded on the part of the late Lord Coleridge. Three or four years before his death, when the Conservatives were in office, the Chief Justice was nearly choked by a lozenge which he had swallowed in Court 'going the wrong way.' When he was put right in his private room the first words he is said to have gasped were 'Poor Webster!' Unless I am misinformed, Lord Coleridge was handicapped through life in the same way as Lord Hatherley by an accidental blow given to one of his eyes at Eton.

[3] Law Reports, Privy Council Appeal Cases iv. 396. The other important ecclesiastical case which came before the Judicial Committee in his Chancellorship was Hebbert *v.* Purchas (*ibid.* 301).

at the end of the session he found himself unable to read the Queen's message.

Early in September he intimated to Mr. Gladstone his intention of resigning before the autumn cabinets were summoned to frame measures in the carrying of which he could have no part. His chief, whom he had followed with the devotion that Mr. Gladstone was so capable of inspiring, could not press him to remain. 'In common with all his colleagues,' the Prime Minister wrote to Sir Roundell Palmer,[1] 'I deeply regret the loss of so distinguished a lawyer, so able and temperate a counsellor, and one whose character is a tower of strength.' Yet it must be admitted that Lord Hatherley was scarcely a match for his opponents in the Upper Chamber, and that the Government, sorely in need of all the assistance it could find, had for some time past been acquiring the habit of leaning upon the man whom rumour acclaimed as Hatherley's successor.

The resignation took effect from October 15, and the Chancellor laid down the trappings of office without a regret. In the following spring he was operated on successfully, but he had no sound eye in reserve, and he was warned to be sparing in the use of that which had been restored to him. So long as health and strength permitted, he lent his aid in the judicial business of the House of Lords, and he made an appreciative speech in support of Lord Selborne's Judicature Bill, destined to succeed where a scheme of his own had failed. Nor did he allow infirmity to interfere with his old customs.

'I can always manage to get to the Abbey,' he wrote in July 1874, 'three times a week at the early service, and three times at 10 o'clock, for on Mondays, &c., the House of Lords meets at eleven, and I have just time to get there after the service. Music does help me very much, and the glorious beauty of the abbey still more.'

In October 1875 his friend from boyhood to old age, Dr. Hook, was taken from him, and in November 1878

[1] *Memorials, Personal and Political*, i. 281.

he was called upon to endure an even heavier affliction by the death of his wife. He survived her by nearly three years, dying himself on July 10, 1881.

He was a man, my lords, said Lord Selborne, of the most remarkable gentleness and sweetness of disposition, and at the same time, of firmness and decision which never quailed or failed before the performance of any duty. He was a man who had as much purity and simplicity, as much thorough conscientiousness, as much energy and as sound judgment, as, taking into account the infirmity of man, any of us could hope to attain to.[1]

With him the Hatherley peerage became extinct, but he left behind him a nephew who has rendered the family of the old alderman illustrious in another and a very different walk of life—Field Marshal Sir Evelyn Wood, V.C.

[1] Hansard, cclxiii. 476.

CHAPTER XVIII

LIFE OF LORD SELBORNE DOWN TO HIS APPOINTMENT AS SOLICITOR-GENERAL

1812–1861

THE biographer of Roundell Palmer, First Earl of Selborne, cannot complain for lack of material. Some seven or eight years before his death the Lord Chancellor *en retraite* prepared, primarily for his children, but with publication deliberately in view, a history of his own life and a chronicle of the Palmer family. Possessed of a vivid memory which never failed him, even in extreme old age, and with a vast mass of letters and documents before him, he has produced a work, the great merits of which are somewhat obscured by its length and by the redundancy of domestic detail. These are defects which a future generation will pardon more readily than some of his contemporaries have done;[1] and the four volumes of 'Memorials' will remain for all time a storehouse of the legal and political history of the Queen's reign.[2]

He was born on November 27, 1812, at Mixbury, in Oxfordshire, of which parish his father and his younger brother held the incumbency for an unbroken period of eighty years. The former of the two, the Rev. William

[1] E.g. Mr. Gladstone: 'The *padding* in Selborne's book is something fearful' (see *Life of Sir Henry Acland*, 495). But it should be remembered that after the Home Rule schism Gladstone had occasion to be sorely vexed with his old colleague.

[2] *Memorials* (Part I.), *Family and Personal*, 2 vols., were published in March, 1896; *Memorials* (Part II.), *Personal and Political*, 2 vols., in September, 1898. Both series were edited by his daughter, the Lady Sophia Palmer, now La Comtesse de Franqueville.

Jocelyn Palmer, was a scion of the ancient Leicestershire family of Palmer of Wanlip, and was the inheritor of considerable private means, and a valuable family connection. In the year 1810 he had married the daughter of another clergyman, also a man of property, the Rev. Richard Roundell of Marton in Craven; the subject of this memoir was their second son.

Roundell Palmer always reckoned it among the felicities of his life that he was enabled during childhood and boyhood

> to acquire some knowledge of and a strong interest in the English agricultural poor, and to see what a centre of love, of practical wisdom, and of help in every kind of need a good conscientious parish clergyman may be.[1]

This knowledge not only coloured the whole of his career, but led him to devote the evening of his days to a vigorous defence of the Church of England against the assaults of the Liberation Society. His upbringing in a rural parish gave him a love of all simple country pleasures and an interest in natural history which never forsook him.

After a good classical grounding at home he went to Rugby with his elder brother William in the summer of 1823. His head master was Dr. Wooll, the predecessor of Arnold, who, though a good scholar and a gentleman, could not succeed in raising or indeed in maintaining the character of the school.[2] Though Roundell Palmer declares that he was not unhappy, he admits that he was severely bullied, and it is clear that the general moral tone was susceptible of very drastic improvement. After two years his father removed him to Winchester, which

[1] *Memorials, Family and Personal*, i. 56.

[2] I can well remember the schoolboy doggerel which a grandfather of mine, who must have been a contemporary of Lord Selborne's, used to be fond of quoting:

> 'Dr. Wooll of Rugby School
> Bangs us about without method or rule;
> When we go home he calls us "My dears,"
> When we come back he pulls our ears.'

he entered as a commoner in November 1825, thus conferring upon that foundation the distinction of seeing three of its alumni on the Woolsack in the space of twenty years.[1]

At Winchester he remained until the summer of 1830, winning every prize and distinction which came within his grasp, and leaving as captain of the school and senior prefect in commoners. Among his friends were William Ward, the author of 'The Ideal of a Christian Church,' Robert Lowe, and Edward Cardwell. Dr. Gabell had recently been succeeded by David Williams,[2] and matters had mended since the misrule which drove Page Wood and his comrades into mutiny; but Palmer's reflections on his school days are hardly enthusiastic. A letter written in 1857 to a young cousin who had just been made a prefect supplies a clue to the causes of his self-reproach, magnified by a too sensitive conscience:

When I was made prefect, the state of discipline was low and the state of moral opinion and practice in the school was certainly far from good, and the prefects, as a body, were then young, and not physically strong, nor looked up to as leaders in the games and popular exercises of the school, though they were, perhaps, most of them above the average, in point of intellect and intellectual ambition. The result was that their position was a most difficult one; I think I have never, in my whole subsequent life, been in a position of anything like equal difficulty, and the difficulty was, in fact, too much for us all. We failed to overcome it, and it overcame us, not without a serious injury, for some time at all events, to the moral principles and practice of some.[3]

[1] Lord Cranworth (1852), Lord Hatherley (1868), Lord Selborne (1872). Curiously enough, the only other Victorian Chancellor who came from the public schools is the Harrovian Pepys. Lord Loreburn, it may be added, is an old Cheltonian.

[2] Afterwards Warden of New College; for Gabell, see *supra* 336.

[3] *Memorials, Family and Personal*, i. 108. Many prefects and sixth-form boys from other schools besides Winchester can echo the same confession. The whole letter is replete with the most admirable advice, of which I venture to select the following as a sample: 'The next rule is to make as little use of your hands or stick as possible at all times; and when you call "junior," or

But the clouds of boyhood had no power to dim the affection which Roundell Palmer ever retained for his old school. He was a regular attendant at the Eton and Winchester match, and at the Wykehamist dinner, for which he long acted as secretary. And in 1843, on the 450th anniversary of the completion of the college, he wrote and printed a very spirited ballad in honour of William of Wykeham. Of all the congratulations which were showered on him during a career successful and triumphant to an almost unexampled degree, none gave him more unfeigned delight than his reception *ad portas* by the prefect of hall and the scholars.[1] The fact that he came eventually to number a head master of Winchester among his sons-in-law was a source of the greatest delight and interest to him.

Palmer went into residence at Trinity College, Oxford, where he had won an open scholarship, after the Long Vacation of 1830. The four years of his undergraduate life were crowded with honours. As a freshman he took the Chancellor's Prize for Latin verse;[2] in 1832 he carried off the Ireland and the Newdigate; in 1834 he took a first in classics, was awarded the Eldon Law Scholarship, and was selected to recite an ode in the Sheldonian on the installation of the Duke of Wellington. In the following year he won the Chancellor's prize for a Latin essay, and was elected to a Fellowship at Magdalen. With such credentials needless to say that he had the entrée into the best intellectual society which the University possessed. Oxford abounded just then in young men 'full of towardness and hope, such as the poets call *Aurorae filii*, sons of the morning,'[3] and the friendships which he was happy enough to form were numerous and enduring. It was the heroic age of the Union, with

tell a junior to do anything, to remember that you and he are both gentlemen's sons, and speak in the tone of a gentleman.'

[1] *Memorials, Personal and Political*, i. 321.

[2] The subject was *Numantia*; his brother William had won the same prize in the preceding year with a poem on *Tyre*.

[3] Sir Francis Bacon, in the *Case of the Duels*, St. Tr. ii. 1036.

William Ewart Gladstone among the Presidents; Palmer became a constant and an effective speaker, and in his turn filled the chair. He was still, and he remained for many years, faithful to the Tory traditions of his household, and when in 1833 the Liberals broke through the ring of Tory office-holders and elected Massie, of Wadham, as a President after their own heart, Palmer was one of those who, without seceding from the Union, helped to develop a rival debating club, the Ramblers. How the predominant faction tried to expel the Ramblers from the elder society, and how they were defeated after a debate which abounded in lively passages, has been sung in that greatest of Macaronic poems, the 'Uniomachia,' by the Rev. Thomas Jackson.[1] Palmer's intervention as an unsuccessful peacemaker is described in the following lines:[2]

Ὡς φάτο. Παλμερίωνι δ' ἄχος γένετ' · ἐν δέ οἱ ἦτορ
Εἰς θρώτην ῥώζησε, διάνδιχα μερμηρίζον,
Ἠ ὄγε ῥούειεν Μασίχην αἰσχροῖς ἐπέεσσιν·
Ἠὲ χόλον παύσειεν, ἐρητύσειέ τε θυμόν.

. . . . . .

[1] Lord Selborne (*Memorials, Family and Personal*, i. 130) attributes it to the Rev. Wm. Sinclair, afterwards Archdeacon of Middlesex, and father of the present Archdeacon of London; Mr. Jackson admits that 'Sinclair of Skimmery' entered heartily into the scheme and composed many of the best lines and notes. The *jeu d'esprit* was reprinted at Oxford in 1875. The title-page of the original edition ran as follows: *Uniomachia Canino-Anglico Graece et Latine, ad codicum fidem accuratissime recensuit; annotationibus Heavysternii ornavit: et suas insuper notulas adjecit, Habbakukius Dunderheadius, Coll. Lug. Bat. olim Soc.*, etc., etc.

[2] For the benefit, as the Cambridge undergraduate said, of the Vice-Chancellor and the ladies, I append the translation, after the manner of Pope, for which Archdeacon Giles, of Lincoln, is believed to have been responsible:

'He said, and Palmer heard with grief opprest,
His heart swelled high, divided in his breast;
Now words disdainful burst their angry way.
Now calmer judgment bids his fury stay.

. . . . . .

Μῆνιν ἔχων θύμῳ, στυγερῶς νιττήσατο ὀφρῦς
Ἀλλ' ἐκ τῆς γλώσσης μέλιτος γλυκίων ῥέεν αὐδή·
"Ἄμφω ὅμως κραδιὴ φιλέουσά τε, κηδομένη τε
Ῥαμβλήρους φιλέει πίστους, φιλέει τε Μασεῖχους·
Ἀμφοτέραις δὲ θέλω σφοδρῶς κλύββαισι βελόγγειν,
Ἀμφοῖν γὰρ καλοῖν, προμίσω σπήκεσθαι ἐν ἀμφοῖν."
Ὣς ἔφατ' εὐφρονέων.

Palmer had encountered a sharp but, as he considered it, a salutary rebuff in the shape of a 'pluck' at his first attempt to pass Responsions; he had neglected his Euclid and suffered accordingly.[1] The effect of this incident was to determine him to read for mathematical as well as for classical honours as soon as he had safely negotiated the Pons Asinorum. The next Long Vacation accordingly found him at Seaton, in South Devon, under the guidance of George Johnson, afterwards Dean of Wells, and then the mathematical coach of highest repute in the University. Among the other pupils was a young Scotch scholar of Balliol named Tait; and a local dissenting minister who chose that summer for the composition of a poem on 'Seaton Beach' hit off an extraordinary 'double event' in his prediction of the destinies awaiting certain members of the Oxford reading party.

He, whom near yonder cliff we see recline,
A mitred prelate may hereafter shine;
That youth, who seems exploring nature's laws,[2]
An ermined judge, may win deserved applause.

The Bar was the profession which Roundell's father had selected for him; the city interest of the Palmers

And while his breast disdain and choler fill'd,
Words, sweet as honey from his lips distilled.
"With equal zeal my friendly soul approves
The trusty Ramblers, and the Union loves;
Ardent my wish in both alike to share,
Both clubs my pride, and both debates my care."'

[1] 'Pluck' has only been superseded by 'Plough' in recent years. It is becoming almost necessary to remind the reader that Moderations were not invented until 1853, and that the granting of a certificate in lieu of Responsions dates from 1874. 'Little Go' and 'Great Go' are becoming terms that require elucidation.

[2] Palmer had been noticed making a collection of the rarer pebbles.

and their close connections the Horsleys could not fail to be an excellent introduction, and his successes at Oxford and his great powers of speech presaged a career of no ordinary brilliancy. He had acquiesced cheerfully in the prospect until the death of a much-loved brother and a somewhat morbid instinct of self-reproach, to which he was subject for many years,[1] brought him to believe that he 'would more consult the welfare of his soul by abandoning all worldly views and consecrating himself to the service of God in the ministry.'

His father dissuaded him in wise and tender words, a sentence or two from which supply the key to his son's misgivings:

> As for wealth and honour and name, &c., and the moral evils that are too often attendant upon them, it may be wise at present to think little about them. Probably they may never come; only if they do, pray that you may use them aright. Be humble and escape the evil.

It is notable that two of the statesmen with whom Roundell Palmer was brought into near contact in after life, Mr. Gladstone and Mr. W. H. Smith, should each have besought his father to be allowed to abandon secular ambition and take Holy Orders.

These yearnings on Palmer's part may have been due in some degree to the influence with which he was surrounded not only at Oxford but also on his first removal to London. The Tractarian movement was just beginning, and he joined a small 'Patristic' society, chiefly composed of young clergymen, for the study of the Fathers of the first four centuries. His ardour soon abated, he tells us, when

> I came to perceive the real nature and magnitude of the field before us, and the extremely wide difference between the idea of half inspired wisdom with which I had begun, and the true character of the Alexandrian school upon which I was entering.[2]

[1] *Memorials, Family and Personal*, i. 176, 233. [2] *Ibid.* i. 208.

His elder brother, William, to whom he was deeply attached, was in the van of the Oxford school, and Frederick Faber, his dearest undergraduate friend, had already renounced the evangelistic tenets of his youth for those of Pusey and Newman.[1] But Roundell, though always a High Churchman, was never in line with the extreme developments of Tractarianism, and lived to hear himself denounced as an Erastian.

He had been admitted at Lincoln's Inn on May 30, 1834, and in November 1835 he began his legal studies in the chambers of Mr. Walters, a conveyancer, at whose instigation he had broken ground by a study of the six volumes of Cruise's 'Digest of the English Law of Real Property.'

> The descent, he writes, from the flowers of history, poetry and philosophy to these dry bones of technical systems, and especially to the dull copying clerk's work and mechanical processes of conveyancing was dispiriting enough.[2]

Nor could he be brought to consider the English system of real property to be the perfection of human wisdom. The realities of litigation as presented to him in the chambers of an equity draftsman made a pleasing change. Mr. James Booth,[3] to whose chambers he transferred himself at the end of his year with Mr. Walters, took no other pupil—in itself an inestimable advantage for a student eager to learn. Here Palmer rapidly acquired an amount of practical knowledge sufficient to render him competent for business of his own as soon as it should present itself. He was called to the Bar on June 7, 1837, having already become established in chambers, long since swept away, on the Chapel staircase in Lincoln's Inn; a certain prestige attached to them from their having formerly been tenanted by Sir John Leach.

[1] It is probably needless to remind the reader that both William Palmer and Faber were subsequently received into the Church of Rome.

[2] *Memorials, Family and Personal*, i. 199.

[3] Afterwards Permanent Legal Secretary to the Board of Trade.

On coming down from Oxford he had been somewhat disconcerted by the advice of one of his kindest friends, Sir John Richardson, a former Justice of the Common Pleas, to apply himself exclusively to his profession, and to make *Totus in illis* his motto.[1] He complied to a modified extent by eschewing the pleasures of general society; but during his pupilage and the years that immediately followed he devoted himself to a course of reading in the classics, ancient and modern, which the somewhat restricted range of the Oxford learning rendered highly advisable.

His Fellowship kept him in touch with Oxford friends and with the current politics of the University. The Magdalen of that epoch, wealthy and luxurious, was not exactly the ideal of a college foundation, a fact which had no small influence upon the prepossessions of Lord Selborne when he was called to sit as Chairman of the Second University Commission.[2] There were abuses, especially with regard to the retention of Demyships, which roused a strong feeling among the younger dons, and at a general college meeting Roundell Palmer ventured to bring forward a proposition for the closer observance of the statutes. This was met by an appeal from the venerable President, Martin Routh, who had ruled the college since 1791, to let the existing system last out his time. To refuse the prayer of an old man of eighty-two seemed inhuman, and the matter was allowed to drop, but Routh lived on till December 22, 1854, dying in his hundredth year.[3]

In April 1839 came Palmer's first chance in his profession: hitherto his practice had been confined to a stray 'consent' brief, and his first eighteen months at the Bar had only yielded the modest total of twenty-six guineas.[4] But his uncle, Mr. Horsley Palmer, was high in influence at the Bank of England, and an intimation in the ear of Messrs. Freshfield, hereditary solicitors of that

[1] *Memorials, Family and Personal*, i. 193.
[2] *Memorials, Family and Personal*, i. 232.
[3] *Vide infra*, 423.
[4] *Ibid.* 245.

great corporation, was not long in bearing fruit. Palmer found himself briefed third on the equity side of the Court of Exchequer with instructions to oppose a motion for the appointment of a receiver. When his leaders had urged every point which their ingenuity or experience could suggest, there seemed little left for number three. But Palmer, like Erskine in the memorable Greenwich Hospital case,[1] was not to be daunted. Dropping the argument from the facts disclosed in the affidavits he pressed upon the Court the established rule in Chancery, not to interfere with the state of possession before the hearing of a cause without some proof of danger to the property. The motion was refused, and Lord Selborne's modesty omits to say how far his speech contributed to that result, but Baron Alderson, to whom Mr. Palmer was a complete stranger, passed a slip of paper down to Mr. James Freshfield warmly commending his young counsel. The latter's fee book for the year registered a hundred and sixty guineas.

The increase in his practice which followed, though steady, was not sufficiently rapid to exhaust his energies. He kept up a close connection with Oxford, examining for the Ireland in the year when Frederick Temple, Blundell scholar of Balliol, was among the specially commended. And he contributed to the 'British Critic' an elaborate review of his friend Charles Wordsworth's Greek Grammar, a work then regarded as a revolutionary rival to the manuals in use at Eton and Westminster, but now, I am informed, gone the way of τύπτω. A letter of his to the 'Times' in defence of the National Society brought him the acquaintance of Mr. Barnes, the editor, and a retainer as occasional leader writer on that paper. For three years he acted in this capacity, and in his own words

> acquired some experience of the practice, certainly not without moral danger, of writing hastily, smartly, and perhaps

[1] The King *v.* Baillie (Campbell's *Lives of the Chancellors*, viii. 245).

censoriously about matters of which I had no adequate knowledge. On the other hand I had many opportunities of expressing as forcibly as I could my opinions on subjects in which I took a real interest. I was enabled to defend my Oxford friends from what I thought unjust obloquy; to strike hard blows at the practice of duelling for which Lord Cardigan's trial and some other duels fatal or ridiculous, which shocked the public, gave occasion.[1]

This dalliance with daily journalism was regarded with not unnatural apprehension in the family circle, and a professional visit from Mr. James Freshfield to the chambers in Lincoln's Inn when the young barrister happened to be at Printing House Square gave point to the parental warnings. In the autumn of 1843 he finally abandoned the editorial 'we,' influenced by the increasing calls of business and 'by some divergence of opinion between Mr. Walter and myself as to the endeavours of Bishops Blomfield and Phillpotts to make the usages of the Church more conformable to the rubrics (which he strongly opposed, and I as decidedly approved).'[2]

In the same year Palmer felt justified in moving into more commodious chambers at 11 New Square, which had formerly been occupied by Lord Langdale. Here he soon found his hands as full as they could conveniently hold; the most promising members of the coming generation were eager to read with him, and among them may be mentioned the first Lord Farrer, and his brother-in-law Arthur (afterwards Lord) Hobhouse,[3] and Montague Bernard, the founder of the 'Guardian.' Though Mr. Bernard

[1] *Memorials, Family and Personal*, i. 303. Palmer's influence may not unfairly be traced in the mellowing tone of 'the Thunderer,' referred to by Crabb Robinson (*Diaries*, iii. 237), and which Frederic Rogers, a regular leader-writer during these years, speaks of with satisfaction (*Letters of Lord Blachford*, 113).

[2] *Memorials, Family and Personal*, i. 308. His last leader appeared on August 10, 1843.

[3] Hobhouse says that Palmer never had a really first-rate junior practice, partly owing to the great elaboration of his drafting, all done with his own hand, and partly to the short time which elapsed before his taking silk (*Memorials, Personal and Political*, ii. 437).

obtained high reputation as an international jurist, and eventually became a member of the Judicial Committee of the Privy Council, Palmer has to speak of him as 'one of the few really able men to whom, without fault of their own, the opportunity of success at the Bar never came.'

When Parliament was dissolved at the beginning of 1847 Palmer felt that his position justified him in attempting a public career, and after a sharp contest he was returned for Plymouth. He stood as a 'Liberal Conservative'—in other words a Peelite—and in that garb defeated a Radical country gentlemen named Calmady. Viscount Ebrington, a moderate Whig, headed the poll. But, since the Reform Bill, Plymouth had never returned any but members of orthodox Liberal faith; and Palmer's achievement, coming, as he did, a complete stranger to the borough, and hoisting the banner of electoral purity in an Admiralty town, was a remarkable victory. During the heat of the contest it was noticed by his committee that Mr. Palmer deserted his canvass on more than one occasion to pay visits in a quarter where no votes were to be secured. The motive of this dereliction of duty was the presence in Devonport of Lady Laura Waldegrave, to whom shortly afterwards he became engaged, and whom he married on February 2, 1848. The wedding necessitated the surrender of the bridegroom's Fellowship, the emoluments of which, for some time past, he had devoted to a fund for the decoration of the college chapel.

Palmer's first important speech[1] in the House of Commons was by his own account not an oratorical success. It was delivered in support of the removal of the parliamentary disabilities of the Jews, and he was depressed by the consciousness of acting in opposition to the sentiments of his father and of many of his best

[1] Hansard, xcviii. 642. His actual maiden speech (December 13, 1847) was a warm defence of Bishop Selwyn, whose political action in New Zealand had been the subject of severe comment.

friends, both in and out of Parliament. In accordance with his own convictions and in the interest of his constituents, he spoke vigorously in opposition to the Bill for the Repeal of the Navigation Acts.[1] It was not, however, until the session of 1851 that he made his mark by a couple of vigorous speeches against the Ecclesiastical Titles Bill. He had stood aloof from the agitation against Papal aggression, and he had differed from Page Wood when they were jointly consulted by Bishop Blomfield as to the appropriate steps to be taken in face of the 'pretended claims' of Cardinal Wiseman.

No man, he wrote to his Diocesan,[2] can be more opposed than I am to the corrupt doctrines and un-Catholic usurpations of the Church of Rome. But I think the way of resisting the encroachments of that church is by strengthening the hands of the Church of England, restoring her synodical organisation, multiplying her bishops, and giving greater flexibility to her services and institutions, and not by the enactment of penal laws against the Roman Catholics.

Plymouth was in those days a Protestant stronghold, and the 'Puseyite' views of the junior member had aroused misgivings in the hearts of some of his strongest supporters. Still, when Parliament was dissolved in July 1852, so long as the opposition was confined to the two Liberal candidates his prospects were not unfavourable; but at the last moment there appeared on the scene a Millwall shipbuilder whose name is still preserved in Mare Street, Hackney. Mr. Mare enjoyed the official countenance of the Conservative Whips; the 'dockyard screw' was applied unblushingly in his favour against Palmer, and a week before the polling the latter was persuaded to retire, and avoid almost certain defeat. Mare was returned with Mr. Robert Collier as his colleague, but Nemesis was on his heels, and in the following May he was unseated on petition. A requisition

[1] Hansard, ciii. 1218 (March 23, 1849).
[2] *Memorials, Family and Personal*, ii. 79.

to contest the vacancy was presented to Palmer by an influential section of the electorate; he accepted the invitation with the proviso that he should not be expected to canvass, and he was sent back to Westminster as an independent supporter of Lord Aberdeen and the Coalition.

During the struggle in Parliament over the Oxford University Bill of 1854, Palmer had ample opportunity for displaying his views on Church Government, and his intense conservatism in matters where the privileges of the Church of England were concerned. He had opposed the original appointment of the Royal Commission in 1850, convinced that the abuses in college administration could be more appropriately reformed by reviving the power of visitation than by parliamentary interference. And now in committee he was able to introduce a saving clause which preserved the connection of Winchester with New College and of Merchant Taylors' with St. John's. He was less successful in his opposition to the admission of Dissenters. He stood by the old Tory doctrine that to convert the Universities into places of mere secular learning would be to destroy their existing uses and character; and he never regretted the part which he took in the controversy.

If all my apprehensions, he wrote in 1888, as to its consequences [1] have not been realised, some of them certainly have, nor can any man say with confidence what may still be to come. That the Universities should have become to any extent battlefields between belief and unbelief, that in such places of education public authority should be neutral between these forces, and the authority (direct or indirect) of University or college teachers sometimes used on the side of unbelief, must be confessed (except by unbelievers) to be a grave drawback upon any intellectual or other benefits which have resulted from the changes begun in 1854 and since by successive steps further extended.

[1] The reference is to Mr. Hayward's motion to abolish tests and subscriptions on matriculation at Oxford. It was carried June 22 1854.

It is remarkable that one of the most important of these successive steps was actually presided over by Palmer himself.

He was now a Queen's Counsel of some years' standing, Lord Cottenham having given him a silk gown on February 21, 1849. He elected to practise at the Rolls, and on the appointment of Sir George Turner as Vice-Chancellor in 1851 he rose at once to the leadership of the Court, which, with Sir John Romilly as its judge, enjoyed just then an exceptional popularity among suitors. Released from the drudgery of drafting, he was now free to devote himself exclusively to advocacy.

It has been said that Palmer brought to the practice of the law a mind as keen and subtle as that of one of the great mediæval schoolmen,[1] and Lord Westbury once declared that 'if Palmer could get rid of the habit of pursuing a fine train of reasoning on a matter collateral to the main route of his argument, he would be perfect;'[2] while Lord Hobhouse considered that he excelled all his rivals in point of ready memory, in his vast knowledge of case law, and in his capacity for addressing himself to unforeseen emergencies.

He could perform the most difficult operation of strategy, changing front in face of the enemy. It was an admirable sight to see him turning the flank of a hostile position, taken up by the Court, such as Bethell would have attacked in front, rounding off an angle here, attenuating a difference there, bringing some previously neglected portion of the case into relief, relegating others to the background, and so restoring the battle. Of course all great advocates can do this more or less, but that which gave Roundell Palmer the superiority in it (apart from the great versatility and adaptability of his mind) was above all his perfectly accurate and ready knowledge of every detail to be found in his papers.[3]

[1] *Dict. Nat. Biog.*, xliii. 152.
[2] *Life of Lord Westbury*, ii. 8.
[3] *Memorials, Personal and Political*, ii. 437.

Another observer [1] has drawn a very apt contrast between his methods and the sledge-hammer but effective tactics of his main opponent in the Rolls Court, the late Lord Justice Selwyn.

> When Palmer's turn comes he places his adversary's case on the table of the Court with all the care and delicacy that would be used by an anatomical demonstrator, and then proceeds to dissect it, pointing out to the Court, as he goes along, its discrepancies and inconsistencies, until by a complete dissection its force and effect is destroyed.

Many are the stories of the almost incredible powers of application displayed by Palmer at the Bar, of his swiftness in mastering his briefs and of the tenacity with which his mind retained their contents. The traditions of his sleepless industry surpass anything that is recorded of his contemporaries, and it was stated in print, after his elevation to the Woolsack, that he had been accustomed to work night and day for weeks at a stretch, only resting on Sunday and spending the whole of that day in bed. Lord Selborne repudiated these extravagant stories, but pleaded guilty to having on one exceptional occasion worked from 2 A.M. on Monday to late on Saturday without seeking his couch. His power, indeed, of going without sleep and yet retaining his mental activity at its highest level was the wonder and despair of those who knew him. 'I have seen him,' writes Lord Hobhouse, 'all trembling and quivering from overstrain and yet apparently as quick and alert in mind as ever.' [2]

Palmer's political progress was much more interrupted than his rise at the Bar. In March 1857 he supported Cobden's vote of censure upon Sir John Bowring's action in the lorcha 'Arrow' case, and he spoke in immediate reply to Bethell, answering him, as he maintains, on all

[1] Vouched by Baron Pollock (*Memorials, Personal and Political*, ii. 434) as 'a very learned equity junior.'

[2] *Ibid.* ii. 438.

points of a highly technical argument.[1] At the dissolution that followed immediately he was told that Plymouth would have nothing to say to any anti-Palmerstonian, and he did not seek re-election. One of his rare lapses from Christian charity is to be found in his estimate of the man who was indirectly the means of his exclusion from Parliament for four critical years.

Dr. Bowring, a man of letters and a doctrinaire Radical, had been for some years one of the established bores of the House of Commons; but being a steady supporter of Lord Palmerston's Government he was at last rewarded by knighthood and the government of Hong Kong. What fitness there may be in a fourth- or fifth-rate English politician, to whom it is not convenient to give any office at home, for the management of difficult foreign relations, I do not profess to understand.[2]

To be left out of the parliamentary race at a moment when the great prizes of the lawyer politician were beginning to come within his reach was a severe trial, and for some unexplained reason Palmer failed to secure a nomination at the general election of 1859. But though excluded from the House of Commons his reputation was daily growing, and he received a striking illustration of this in a surprise visit paid him by the Austrian Ambassador, who had been urged by Lord John Russell to consult him on a grave question of international law.[3]

The sudden death of Lord Campbell on June 23, 1861, caused a 'general post' in the legal world. Bethell became Chancellor; Sir William Atherton was made

[1] *Vide supra*, 237. [2] *Memorials, Family and Personal*, ii. 319.

[3] *I.e.* the possibility of inducing the Court of Chancery to grant an injunction against the manufacture in England of notes to be issued by 'the Hungarian nation' (The Emperor of Austria *v.* Kossuth and Day, 3 De Gex Fisher and Jones, 217). The motion was successful, both before Vice-Chancellor Stuart and in the Court of Appeal. The Emperor of Austria was held entitled to represent in a British Court of Justice the collective interests of his Hungarian subjects in preventing any detriment to the value of property and commercial dealings in that country from the introduction there of spurious notes meant to be circulated as money (*Memorials, Family and Personal*, ii. 365).

Attorney-General, and Palmer Solicitor-General. A seat was found for him by Lord Zetland as one of the two members for Richmond in Yorkshire, a Whig pocket borough which survived down to the Redistribution Bill of 1885. Next to Sir William Horne, Sir William Atherton's is perhaps the most colourless individuality which ever filled the high office of Attorney-General; and it is difficult to believe that if Palmer had been in the House of Commons in 1859 he would have been passed over in his favour. Even now he had been designated by many voices for the higher office, but as Lord Westbury wrote, 'It would have been an invidious thing, in the mind of the profession, if you had at once been made Attorney-General, and you would have been the last man to have desired to inflict such a painful and injurious blow on a very estimable and excellent person.'[1] To third parties, however, the Chancellor spoke in a different tone of this estimable and excellent person. 'Surely you are not going to put Palmer over Atherton's head,' said someone to him. 'Certainly not,' was the reply; 'I never attempt impossibilities—I did not know that Atherton had a head.'[2] This sort of genial criticism at the expense of his friends helps us to understand the feelings with which Lord Westbury was regarded by his contemporaries.

[1] *Memorials, Family and Personal*, ii. 369.
[2] *Life of Lord Westbury*, ii. 8.

CHAPTER XIX

LIFE OF LORD SELBORNE FROM HIS APPOINTMENT AS SOLICITOR-GENERAL TO HIS ELEVATION TO THE WOOLSACK

1861–1872

In an interview with the Prime Minister preliminary to his acceptance of office, Palmer had made two stipulations only: he was to be free to take his own path on the questions of Church rates and of marriage with a deceased wife's sister.[1] Irish Disestablishment was not yet within the range of practical politics. Though he had slowly drifted from the old Conservative moorings, his Liberalism was ever of the extremely moderate type, and he was destined to undergo many a qualm and much searching of heart in the company with which he had now thrown his lot.

He took his seat in Parliament on July 11, 1861, and was knighted on August 5. He held the post of Solicitor-General until September 24, 1863, when he succeeded Atherton, who had resigned on the ground of ill-health. These were anxious years for the law officers. The War of Secession was already raging when Sir Roundell received his first appointment, and one of his earliest duties was to advise the Government that the seizure of Messrs. Mason and Slidell on board the 'Trent' was an unjustifiable violation of the rights of the British flag. The *fortiter* of our Ministry combined with the *suaviter* of the Prince Consort and the good sense of President Lincoln averted war, but trouble followed upon trouble.

[1] *Memorials, Family and Personal*, ii. 367.

The case of the 'Alexandra,' already alluded to,[1] exposed the Government to a rebuff in the Law Courts, and the escape from English ports of the 'Florida' and the 'Alabama' sowed the seeds of the Geneva arbitration, in which Palmer himself was destined to play so prominent a part. In one form or another nearly every disputed point of international law—the obligations of neutrals, the recognition of belligerents, the interpretation of the Foreign Enlistment Acts, the construction of the Declaration of Paris—came before the Attorney- and Solicitor-General and the Queen's Advocate. And apart from their advisory duties it devolved upon Palmer as the fighting man of the trio to defend the action of the Government over the legal questions arising out of them in the House of Commons.

His speech of March 7, 1862, on a motion by Mr. Gregory to the effect that the blockade of the Southern Ports was contrary both to the Declaration of Paris and the law of nations, was widely applauded, and he quotes an interesting appreciation from the London correspondent of a provincial paper,[2] in which his performance is contrasted with the methods of his predecessors in office. The writer was no respecter of persons, and he contrasted Palmer's 'thin, bloodless face, and his voice slightly disfigured with a lisp and continually rising into an unpleasant falsetto,' with the expressive face, the organ-like voice, the graceful gestures, and the felicitous sentences of Cockburn. None the less he declared that in point of effectiveness for its purpose Palmer's speech surpassed any oration delivered by Sir Alexander while law officer of the Crown.[3]

In his 'Memorials,' Sir Roundell Palmer does not materially assist us in clearing up the mystery which surrounds the escape of the 'Alabama' from the Mersey

[1] *Vide supra*, 300.

[2] *Manchester Examiner*, March 12, 1862 (*Memorials, Family and Personal*, ii. 404); Hansard, clxv. 1209.

[3] This, of course, excludes Cockburn's famous speech in the Don Pacifico debate (Hansard, cxii. 609—June 28, 1850).

on Tuesday, July 29, 1862. There is an idle tale that the Ministerial inaction at the critical moment was due to the refusal of the Solicitor-General to read the papers in the case on a Sunday. Without referring to the story, and very probably having never heard of it, Palmer says simply that he never saw the all-important depositions from Liverpool till they were produced in consultation by the Attorney-General on the afternoon of Monday, the 28th.[1] Their joint opinion was in Lord Russell's hands early the next day, and orders were immediately sent down to Liverpool for the seizure of 'No. 290,' as the vessel was known in the shipbuilder's yard; but in the meantime the bird had flown.

Palmer, however, does completely knock the bottom out of the narrative given by that entertaining but most inaccurate writer, the Rev. Thomas Mozley:[2]

I met Sir John Harding, the Queen's Advocate, he relates, very shortly after the 'Alabama' had got away. He told me that he had been expecting a communication from Government anxiously the whole week before, that the expectation had unsettled and unnerved him for other business, and that he had stayed in his chambers rather later than usual on Saturday for the chance of hearing at last from them. Returning from the country on Monday when he was engaged to appear in Court he found a large bundle of documents in a big envelope, without even an accompanying note, that had been dropped into his letter-box on Saturday evening.

Lord Selborne asserts that during the greater part, if not the whole, of the month of July 1862 Sir John Harding was disabled from attending to either public or private business.

He could not have been in his chambers or attending to any engagement in Court on Saturday the 26th or Monday the 28th, for he was then, and for some days previously, under care as a lunatic without prospect of recovery.[3]

[1] *Memorials, Family and Personal*, ii. 424.
[2] *Reminiscences chiefly of Oriel and the Oxford Movement*, ii. 139.
[3] *Memorials, Family and Personal*, ii. 424.

It is undisputed] that the 'Alabama' depositions were given to a Foreign Office messenger for delivery to the three legal advisers of the Crown on July 23, and they were not seen by the Solicitor-General until the 28th. Palmer declares that Sir William Atherton was the last man to be guilty of neglect or delay in such a matter, and he adds [1] that it was not till the summer of 1869, when the dispute between Great Britain and the United States was assuming a critical character, 'that anybody thought of inquiring closely into the exact circumstances. At that time both Sir William Atherton and Sir John Harding, and all persons connected with either of them who could have thrown any light upon the matter, were dead.' I am inclined to believe that the initial delay arose in Harding's chambers through his absence and illness, and that the papers when recovered were delivered on the Saturday at the Attorney-General's chambers too late to reach him until the Monday. That there was gross carelessness, if nothing worse, among the subordinates is only too obvious.

We have seen that Palmer was made Attorney-General in September 1863, his place as Solicitor being taken by his old Plymouth colleague, Sir Robert Collier. In this capacity he had the painful task of defending Lord Chancellor Westbury from the vote of censure in the House of Commons,[2] and he was much affected by the ill success of his exertions. Bethell had shown kindness to him when he was young and obscure, and though the former was not unaccustomed in later years to poke fun at his poetical proclivities, he always held Palmer in high regard.[3] As members of the same Administration their relations had been of the pleasantest, though

[1] *Memorials, Family and Personal*, ii. 426. [2] *Supra*, 273.

[3] I think I am justified in appropriating to Selborne Lord Westbury's saying, recorded by Jowett, 'I must not tell to which of the judges he applied the words of Virgil "*Qui Bavium non odit, amet tua carmina, Maevi.*"' They might conceivably have applied to Lord Hatherley had he not been vignetted in the preceding sentence (Nash's *Life of Lord Westbury*, ii. 289).

Lord Westbury had a delight in occasionally shocking the most blameless of men. On one occasion the Attorney-General sent to ask the Chancellor as to the line he should follow in making a rather delicate statement in the House of Commons. 'Tell Pal-mer,' was the answer, 'that he need not be afraid of speaking the plain unvarnished truth.'

As law officer Palmer was not often brought before the public as the hero of a State trial. We have already encountered him in the case of the 'Alexandra,' where the old Chief Baron on the Bench and Cairns and Mellish at the Bar were too strong for an equity lawyer unversed in the trials and chances of Westminster Hall. One *cause célèbre*, however, deserves to be rescued from oblivion.

In the year 1866 a certain Mrs. Ryves petitioned the Court of Queen's Bench under the Legitimacy Declaration Act [1] to decree that her grandmother, Anna Maria Wilmot, had been lawfully married to Henry Frederic Duke of Cumberland, younger brother of George III., whom the history books declare to have died unmarried and without issue in 1790; and that her mother, Olivia Serres, was the legitimate daughter of that marriage. The story was a last echo of a scandal which had been invented towards the close of the Regency and perpetuated in the so-called 'Secret History of the Court of England,' of which the fair Olivia herself was one of the main authors.[2] The 'Princess Olivia of Cumberland,' as she styled herself, was in reality the daughter of a house painter in Warwick named Wilmot, and she bore a striking resemblance to certain members

[1] 21 & 22 Vict. c. 93.

[2] The book bore on the title-page the name of Lady Anne Hamilton, and though that faithful 'Joan of Arc' (see *ante*, i. 241) denied all responsibility for it, a recent reprint makes no mention of the denial. The credulity of Jesse (*Memoirs of the Life and Reign of George III.*, i. 32) has contributed towards the preservation of this farrago of scandalous nonsense, and more than one recent writer has treated it as genuine.

of the House of Hanover.[1] She had led a life of 'pleasure' under the protection of a nobleman whose papers had assisted her in the concoction of her story, and during the storm that raged round George IV. and Queen Caroline, she was induced to put forward her claims for purposes of extortion. She professed to be in possession of certain documents which proved the marriage of George III. to Hannah Lightfoot and his remarriage, by the Archbishop of Canterbury, to Queen Charlotte in January 1765 after Hannah's death. If this were true both George IV. and the Duke of York would have been born out of wedlock, and the Duke of Clarence would have been the rightful king of England. It was a ridiculous invention, but it served its turn for the moment by increasing the unpopularity of the Royal House.

She had been married in 1791 to her drawing-master, John Thomas Serres, marine painter to the King. She was separated from her husband in 1804, and for the rest of her life she figured as an adventuress whose imaginative efforts would have done no discredit to Baron Munchausen. Her later years were spent in penury, and she died within the rules of the King's Bench in November 1834.[2] Her younger daughter, Lavinia, married another artist named Thomas Ryves, from whom she was divorced, and after her mother's death she took up her claim as 'Princess Lavinia of Cumberland.' Needless to say, she found a band of supporters and the requisite pecuniary backing, and after many years of unsuccessful litigation she launched her bolt in the shape I have already described. The case was tried in the Queen's Bench, on an issue directed

[1] 'Then Sussex entertained us with stories of his cousin Olivia of Cumberland, with whom, for fun's sake, as he says, he has had various interviews, during which she has always pressed upon him in support of her claims her remarkable likeness to the Royal Family. Upon one occasion, being rather off her guard from temper or liquor, she smacked off her wig all at once, and said, "Why, did you ever in your life see such a likeness?"' (Creevey, ii. 7).

[2] See *Dict. Nat. Biog.*, li. 257.

by the Divorce Court, before a special jury and three judges, Chief Justice Cockburn, Chief Baron Pollock, and Sir James Wilde, afterwards Lord Penzance. The documents on which the 'Princess Lavinia' relied consisted entirely of forgeries by the 'Princess Olivia,' and gave Sir Roundell Palmer one of his few opportunities for effective cross-examination. He had not proceeded far in his address for the Crown when the jury declared that they had heard enough. Undeterred by this, Mrs. Ryves' counsel insisted on his right to a reply, but the jury declined to hear any further evidence. The Court concurred with them that the signatures to all the documents were spurious, and in particular that the papers relating to the pretended marriage of George III. were 'gross and rank forgeries.' [1]

The verdict was returned on June 13, and a week later Palmer had ceased to be Attorney-General. On the 18th Lord Dunkellin carried an amendment in committee on the Representation of the People Bill which the Government chose to consider as fatal to its principle, and on the next day Earl Russell resigned. On the subject of Parliamentary Reform Palmer was in advance of many of his colleagues. Speaking in the House on May 30, 1866, he declared himself in favour of household suffrage,[2] a phrase which he was one of the first to popularise, and he played a leading part during the next session in transforming the original 'ten minutes Bill' of the Derby Cabinet into a sweeping measure of reform. He drove the Government from surrender to surrender, he was largely responsible for the enfranchisement of the compound householder and for the deletion of the 'fancy franchises,' [3] the latter being the creation and the special hobby of Disraeli himself. He earned

[1] *Memorials, Personal and Political*, i. 25-34.

[2] Hansard, clxxxiii. 1688.

[3] Provisions which gave votes to depositors in the savings bank and holders of Government stock, a plan which under our cumbrous registration law has a good deal to commend it.

the compliment of having his name coupled by the 'Times' with that of Mr. Gladstone as one of the twin leaders of the Opposition.

These two sessions did much to raise Palmer's parliamentary position and to make his name known in the constituencies. A short time back he had been described by the 'Pall Mall Gazette' in terms of carefully studied depreciation as 'the most urbane member of the House of Commons,' with nothing of the 'overbearing faculty' which was the secret of the strength of good lawyers, and as embodying in politics all the most characteristic failings of the Peelites. He had now won the respect of the advanced Radical wing while retaining the confidence of the Liberal centre, some members of which even regarded him as a possible Prime Minister.

But the time was at hand when the sudden emergence of a question on which his views were irreconcilable with those of the vast bulk of the Liberal party was to drive him forth, not indeed to a cave of Adullam, but into that political wilderness from which it is so difficult for a 'stickit Minister'[1] to emerge unscathed. Early in March 1868 it became known that Mr. Gladstone was going to make the disestablishment of the Irish Church a plank in the Liberal platform. The text of his resolutions did not logically imply disendowment, but it was evident that the two were inseparable. Palmer was prepared, though reluctantly, to accept the severance of the political connection between the Irish Church and the State, but for the confiscation to secular purposes of the Church endowments he was unable to discover any necessity or justification. In matters of conscience he was absolutely unyielding, though it was not without long and anxious consideration, and the taking of much counsel with his friends, that he satisfied himself of the course which duty required of him. Finally he resolved

[1] I am aware that this is an incorrect appropriation of the phrase, but must plead its expressiveness and the poverty of the English language.

to abstain from voting on the resolutions and to reserve all public explanation of his attitude for the new House of Commons. His scruples and determination he duly communicated to Mr. Gladstone, who exhausted the powers of argument and entreaty in the endeavour to wheel so valuable an adherent into line. They had no effect,[1] and Palmer quietly persisted in a path which must almost inevitably lead to a great sacrifice. If Gladstone triumphed at the polls, a contingency to which every omen pointed, the late Attorney-General would have an indisputable claim to the Great Seal; there were no competitors. But from this prospect, the goal of every lawyer's ambition, he now turned deliberately aside.

The autumn of the same year brought Palmer what he was wont to regard as the greatest disappointment of his life. It had always been his dream to represent his University in Parliament, and few men have been more richly dowered with the qualities that make an ideal member for Oxford. In 1854 he had been invited to fill the vacancy created by the death of Sir Robert Inglis, but had refused to put himself in competition with Sir William Heathcote. In 1861 his hopes had again been aroused on the unfounded rumour of Gladstone's resignation. Shortly before the general election of 1868 Heathcote announced his intention of retiring, and an invitation was at once issued to Sir Roundell Palmer. But the Oxford Conservatives who had shown their strength three years before in returning Mr. Gathorne Hardy over the head of Gladstone were not going to be baulked. Palmer's resolute stand in defence of the Irish Church was not allowed to atone for his general Liberalism, and Sir John Mowbray (*né* Cornish) was chosen to oppose him. The struggle narrowed down into a contest on ordinary party lines, and Palmer's decision not to give any pledge or assurance on some of the burning ecclesiastical questions of the day deprived

[1] For Sir Roundell Palmer's final reply, in the form of a State paper, see *Memorials, Personal and Political*, i. 85, *et seq.*

him of the powerful aid of Dr. Pusey.[1] A week before the polling day his Oxford committee discovered that the result was a foregone conclusion, and called their man out of the ring. Without any disparagement to Sir John Mowbray it is to be regretted that Oxford should have turned the cold shoulder upon the man who, next to Mr. Gladstone, was perhaps the most illustrious of her living sons.

On November 19 Palmer was again returned for Richmond. At the first moment when he found it impossible to follow his leader blindfolded he had offered to quit that safe and snug little constituency, but Lord Zetland, strongly influenced by Gladstone's own wishes, had begged him to continue as if no divergence of opinion had arisen. The Conservative rout was followed by Disraeli's resignation, and the time for the great act of renunciation had come. The morning after his first visit to Windsor, while in the throes of Cabinet-making, Gladstone sent for Sir Roundell Palmer.

> He said he had mentioned me to her Majesty as the person whom he would most have wished to see in the office of Lord Chancellor, and that he had her Majesty's authority to say that if it was possible for me to accept that office it would meet with her Majesty's approval.[2]

By this time Gladstone had realised that Palmer was inflexible, and that, so long as the Irish Church blocked the way, there was no possibility of their sitting together in the same Cabinet, and the Premier clearly anticipated the refusal which Palmer felt compelled to make. Though, in the course of events, the glittering prize was only deferred for a year or two, no such consideration could have been present to the minds of either of the parties at this interview. Of all professions the law is the one in which occasion has to be seized by the forelock, and where fortune is most chary of repeating her favours. Palmer deliberately renounced what those around him had come

[1] *Memorials, Personal and Political*, i. 108. [2] *Ibid.* i. 113.

to consider as his birthright, and he shares with Lord James of Hereford the glorious distinction of being one of the two men who have refused the Great Seal of England for conscience' sake.[1]

In the course of their interview the Prime Minister had pressed Palmer to accept the Lord Justiceship vacated by the new Chancellor, together with a peerage. The offer was declined, though not without serious consideration; a similar proposition had been made to him by Lord Cairns a few months earlier. By the changes which followed the elevation of Sir William Page Wood the Vice-Chancellorship of the County Palatine of Lancaster was placed at the disposal of Lord Dufferin as Chancellor of the Duchy. This post Palmer begged successfully for his friend John Wickens, whom an incurable modesty, allied to a just appreciation of certain innate forensic deficiencies,[2] had prevented from applying for a silk gown.

One of the reasons given by Gladstone to induce Palmer to take a peerage was that he would be better able in the House of Lords than in the House of Commons to reconcile the free expression of his views upon the Irish Church with an attitude of benevolent neutrality towards the Government. The opportunity of defining his position came with the debate on the second reading of the Irish Church Bill. His speech[3] was a great achievement, there was not a gleam in it of the bitterness which so often accompanies an act of self-sacrifice; a cool argumentative statement of his scruples and objections, it left no sting behind, and raised him to a place in the popular estimation which not many lawyers have occupied. A remarkable proof of this is contained in the encomium passed upon him by one of the

[1] Pemberton Leigh (Lord Kingsdown) refused the Seals once certainly, if not twice, but from purely personal considerations.

[2] Wickens could never argue a case or take a point in which he did not believe, and a study of his face was often a sufficient index to the judge of the merits of the suit on which he was to decide.

[3] Hansard, cxciv. 1906 (March 22, 1869).

attendants of the House of Commons who was showing a party of visitors round the Palace of Westminster.

Sir Roundell Palmer sits here, he said. He *is* a man! there's not another like him in this House—no, nor in England either; nor won't be as long as the world lasts. Why, do you think any other man would have refused to sit on the Woolsack, because it went against his conscience. He is an honest man and a great man, and he's a *good* man. Do you think there is another man in England, working as he does all the week, who would get up early for church on a Sunday morning, and then go and teach a Bible class? Yes, *he* sits *here*![1]

During the next three years Sir Roundell Palmer occupied a position of singular and almost unique distinction. He retained the undisputed leadership of the Chancery Bar, he was in every appeal before the House of Lords, and his professional income was probably double that which he would have received on the Woolsack. In the parliamentary world the rôle of an ex-Minister whose party is in office is one of proverbial difficulty: the temptation to figure as the candid friend is often irresistible, and the vicissitudes of Mr. Gladstone's first Administration gave opportunity in abundance for a man of factious or self-seeking disposition. It is perhaps scarcely a compliment to Palmer to say that he was superior to any such motives, but it could hardly have been expected that he would constitute himself one of the most assiduous and most effective champions of a Ministry in whose counsels he was unable to share and the composition of which must have been in many respects distasteful to him. We have seen how he came forward to defend Lord Hatherley and the Prime Minister over the appointment of Sir Robert Collier. He was as vigilant and untiring in the discussions over the Bankruptcy Bill of 1869 as if he had been still a law officer. He did much towards smoothing over the final settle-

[1] *Memorials, Personal and Political*, i. 121. The extract is contained in a letter which Lady Sophia Palmer found among the late Lady Selborne's papers.

ment of the Irish Church question. He was a hearty supporter of Mr. Forster's Elementary Education Act, helping to stiffen the Government against that section of their supporters which regarded it as a miserable truckling to 'ecclesiasticism.' And a memorable tribute was paid to his influence when on August 21, 1871, the appearance of the faithful Commons in the Upper Chamber at the prorogation ceremony was delayed in order that Mr. Cardwell might read aloud a letter from Sir Roundell Palmer in defence of the Royal Warrant abolishing purchase in the Army.[1]

The spectacle, wrote Mr. Whitbread to Lady Laura Palmer, of a Government relying so often and so much on the help of one man outside their own body, though very gratifying to the friends and admirers of the one man, had another and different aspect when viewed by those hostile to the Government.

It was in connection with the Washington Treaty and the Geneva arbitration and the whole cycle of troubles in which the country found itself plunged over the 'Alabama' business that Palmer had the grand opportunity of demonstrating his powers as a public servant as well as an advocate. We have seen that he was Solicitor-General when

> That fatal and perfidious bark,
> Built in the eclipse and rigged with curses dark,

made her escape from the Mersey. He held the view, in which I am unable to follow him, so far at least as the conduct of the executive officers is concerned, that the British Government was open to no charge of negligence. And he disclaimed all national responsibility for the acts of 'No. 290' and her sister cruisers constructed for or sold to the Confederate Government in this country.

A succession of English statesmen, however, had receded from this contention, and at the beginning of

[1] Hansard, ccviii. 1893; and see *Lord Cardwell at the War Office*, by Sir Robert Biddulph, 140–1.

1871 Lord Granville proposed the appointment by Great Britain and the United States of a joint High Commission to discuss the best mode of settling what were generically known as 'the "Alabama" claims.' This suggestion was accepted by Mr. Fish; and the English Commissioners, including the Marquess of Ripon (then Earl de Grey), Sir Stafford Northcote, and Sir John A. Macdonald, the Canadian statesman, met their American colleagues at Washington. The first proceeding was to draw up rules formulating the principles upon which the proposed arbitration should be conducted, and by which the future action of the two countries should be regulated. The demand for these rules proceeded from the American Commissioners, who made their acceptance an absolute condition of assent to arbitration at all. The British Commissioners would have preferred to place all the facts before the arbitrator and leave him to draw his own conclusions.

It was necessary to refer the question to the Cabinet, and Sir Roundell Palmer was called into counsel with the Foreign Secretary, the Chancellor, and some other members of the Ministry. His view was that it was better to go into arbitration handicapped by a code of *ex post facto* rules than to submit to the whim of the arbitrators any question affecting our good faith or honour.[1] And, in Mr. Morley's opinion, Palmer's argument had no small effect in inducing Mr. Gladstone to agree 'with reluctance' to the acceptance of the rules.[2] The acuteness of the old equity draftsman, however, had detected more than one dangerous ambiguity in them, and his representations to the British Government were effectual in procuring from the President of the United States [3] an assurance that the second rule in particular should be construed in the same strict sense by both sides.[4]

[1] *Memorials, Personal and Political*, i. 214 *et seq.* (*esp.* 216).

[2] *Life of Gladstone*, ii. 11.

[3] General Grant.

[4] *Memorials, Personal and Political*, i. 223; and see for the text of the rules Wheaton's *International Law* (4th English edition), 605.

The Treaty of Washington was signed on May 8, 1871,[1] and by it the settlement of the 'Alabama' claims was referred to a tribunal consisting of five members to be named by Great Britain, the United States, Italy, Switzerland, and Brazil! Chief Justice Sir Alexander Cockburn was nominated as the English arbitrator, and Palmer was requested by Lord Granville to act as counsel for the British Government at Geneva, which was the spot fixed upon for the sittings of the Court. He consented on the understanding, to which it was found afterwards impossible to adhere, that the arbitration should be begun and concluded in the Long Vacation of 1872; and he set to work forthwith, assisted by his old pupil Montague Bernard and by Lord Tenterden, the Permanent Under Secretary of the Foreign Office, upon getting ready the case and the accompanying *pièces justificatives*.

Before, however, any progress had been made in this laborious task a debate in Parliament[2] gave him an opportunity of vindicating the Cabinets not only of Mr. Gladstone but of Lord Palmerston and Earl Russell, in the policy they had adopted over the alleged breaches of neutrality. This was the most successful speech which Palmer ever delivered in the House of Commons, and so great was the tension of public feeling that the Opposition Whip, Colonel Wilson Patten, carried the suspension of the Standing Orders that he might not be curtailed in the development of his argument.

The story of the Geneva arbitration has been told too often and too recently to bear repetition.[3] Mr. Morley declares that, with the Treaty of Washington, it stands out as the 'most notable victory in the nineteenth century of the noble art of preventive diplomacy.' And it may be freely admitted that the three millions and a quarter sterling which this country had to pay for claims

[1] Ratified June 17. [2] Hansard, ccviii. 873 (August 4, 1871).

[3] See particularly *Life of Lord Granville*, ii. 81; Morley's *Life of Gladstone*, i. 14.

which were ludicrously and monstrously exaggerated were a flea-bite compared with the pecuniary and moral damage of a war with the United States.[1] Whether it need ever have come to an arbitration at all if the Conservative Government of 1866–68 had followed the line taken up by their predecessors is another matter. But it is certain that the *modus operandi* of the Geneva Tribunal dealt a severe, if only temporary, blow to the general principle of International Arbitration.[2] It filled the British mind with a distrust that has only gradually been dispelled by the happier methods and the serener atmosphere that have marked the recent proceedings of the International Courts. Much of the fault arose out of the almost criminal recklessness with which some of the arbitrators were selected. No exception could be taken in point of fitness to Sir Alexander Cockburn or Mr. Adams, who represented their respective nationalities. But neither Count Sclopis the Italian, nor M. Staempfli, the Swiss,[3] nor Baron Itajuba, the Brazilian, can be compared with the great lawyers to whom the decision of our disputes and differences have been entrusted for the last seventeen years.

Of the three, remarks Lord Selborne,[4] Count Sclopis had, in his own country, some reputation as a jurist. If the other two had ever studied law it was (I suspect) but slightly, and perhaps only for the purpose of this arbitration.

The first business meeting of the arbitrators was held at Geneva on June 15, but a serious difference of opinion over the 'indirect claims' which all but wrecked the arbitration at the outset produced an adjournment of a

[1] The precise sum was 3,229,166*l*. Some of it, I believe, remains still undistributed, and much of it was applied to purposes never contemplated by the arbitrators.

[2] See Hall's *International Law*, 5th edition, 364.

[3] This gentleman was described by Cockburn as 'a furious Republican, hating monarchical government and ministries in which men of rank take part, ignorant as a horse and obstinate as a mule' (*Life of Granville*, ii. 101).

[4] *Memorials, Personal and Political*, i. 253.

month. On July 15 Palmer again took up his quarters in what he called the city of noises, and there the summer was spent until the publication of the award early in September. He had done all that could be done in a hopeless cause, and no part of the general dissatisfaction at home was directed upon him. He had been acting throughout, as he says, in a sort of strait waistcoat [1] imposed upon him by the Washington rules.

Palmer summed up his experiences and his associates in a bright little *jeu d'esprit*, some lines of which are still quoted.[2] He remarks rather quaintly of one of the younger members of the British suite, Mr. Lee Hamilton, who, owing to ill-health, was compelled to leave the diplomatic service, that 'he afterwards took to poetry.' [3] Palmer himself was an inveterate maker of verses and translations. He dissipates in his 'Memorials' [4] the common superstition that he was a contributor to 'The Book of Praise,' which he edited in 1862, for the 'Golden Treasury' series, and only pleads guilty to a metrical adaptation of the thirty-sixth Psalm, which appeared in a smaller Hymnal. But on all that pertains to the history of hymnology he was an acknowledged authority. During his second Chancellorship he found time to contribute to the new edition of the 'Encyclopædia Britannica' an article on the Hymns of the Latin and Oriental Churches, as well as those of Germany and Great Britain. His addiction to sacred song was the cause of some ribald merriment among his professional brethren.

With the publication of the Geneva award, Roundell Palmer's career at the Bar was brought to a fitting close. Rumours of the impending resignation of Lord Hatherley

[1] *Memorials, Personal and Political*, i. 276.

[2] E.g. his description of Cockburn:

> 'The great judge . . .
> 'Tis impatience of wrong
> Which kindles such scorn from his eloquent tongue.'

[3] *Memorials, Personal and Political*, i. 254.

[4] *Memorials, Family and Personal*, ii. 464.

had already made their way into the newspapers, and on his arrival in England he found a letter from Gladstone claiming his assistance in the office of Lord Chancellor.[1] This time there was no cause for hesitation; the Irish Church was disestablished and disendowed, and he was sincerely anxious to try his hand at those improvements in the administration of the law which could only be promoted effectually by its titular head. On October 15, 1872, he was sworn of the Privy Council and received the Great Seal from the Queen's hands at Balmoral. A day or two later he was gazetted as Lord Selborne.

His title was taken from the village of Gilbert White, situate in East Hampshire, half-way between Alton and Petersfield. Here, on the edge of Wolmer Forest, he had purchased an estate, and had built himself a mansion which was only just completed for habitation a few days before he was entrusted with the Seals. The care of his woods, the laying out of his gardens, and the manifold occupations of an English landlord were now to be the main recreation of his life. And it was characteristic of the man that, before Blackmoor[2] itself was out of the hands of the architect, its owner had built for himself and his neighbours a new church with schools and vicarage.

[1] *Memorials, Personal and Political*, i. 281.

[2] So named from Blackmoor Ridge.

LORD SELBORNE

From the picture by E. M. Bush in the possession of Trinity College, Oxford

CHAPTER XX

LIFE OF LORD SELBORNE. HIS CHANCELLORSHIPS AND LATER YEARS

1872–1895

LORD SELBORNE took the oaths in Westminster Hall on November 2. The main achievement of his first Chancellorship was the Judicature Act of 1873, which, with the ancillary measure of 1876, accomplished the greatest revolution in our legal annals. It brought together, claims its author,[1] in one supreme Court, divided into two branches, one of original and the other of appellate jurisdiction, all the judicial powers of the previously existing Superior Courts in England which had until then exercised separate and sometimes conflicting jurisdictions. It provided for the ultimate reduction of the existing courts of first instance into three divisions: Chancery; Queen's or King's Bench; Admiralty, Probate and Divorce;[2] and gave all the judges in every division equal jurisdiction in equity as well as in law. It effected sweeping reforms in legal procedure, and made all times throughout the legal year available for all London business.

Whatever criticism may be lavished upon portions of the Judicature Act, the fusion of law and equity was a priceless boon to the suitor and to the community at large. Lord Bowen has described in vigorous language

[1] *Memorials, Personal and Political*, i. 298-9.

[2] The final merging of the Exchequer and Common Pleas in the Queen's Bench Division was effected upon the deaths, occurring within a few weeks of each other, of Sir Alexander Cockburn and Sir Fitzroy Kelly (November 20, September 18, 1880).

the maze of doubt and difficulty and hardship with which our legal system was encumbered up to 1873, or rather, as we shall see, up to 1876:

The principles on which the two jurisdictions administered justice were unlike. The remedies they afforded to the suitor were different; their procedure was irreconcilable. They applied diverse rules of right and wrong to the same matters. The common law treated as untenable claims and defences which equity allowed, and one side of Westminister Hall gave judgment which the other side restrained a successful party from enforcing.[1] . . . The common law had no jurisdiction to prevent a threatened injury; could issue no injunction to hinder it; was incompetent to preserve property intact until the litigation which involved the right to it was decided; had no power of compelling litigants to disclose what documents in their possession threw a light upon the dispute, or to answer interrogatories before the trial. In all such cases the suitor was driven into equity to assist him in the prosecution of a legal claim. The Court of Chancery, in its turn, sent parties to the law Courts wherever a legal right was to be established, when a decision on the construction of an Act of Parliament was to be obtained, a mercantile contract interpreted, a point of commercial law discussed. Suits in Chancery were lost if it turned out at the hearing that the plaintiff, instead of filing his bill in equity might have had redress in a law Court; just as plaintiffs were non-suited at law because they should have rather sued in equity, or because some partnership or trust appeared unexpectedly on the evidence when all was ripe for judgment. Thus the bewildered litigant was driven backwards and forwards, from law to equity, from equity to law. The conflict between the two systems and their respective modes of redress was one which, if it had not been popularly sup-

[1] This is only a time-honoured figure of speech. The Chancellor had long ceased to sit in Westminster Hall, except on the first day of term; he and the Vice-Chancellors always sat at Lincoln's Inn and the Master of the Rolls in Chancery Lane. The common law judges sat in Westminster Hall itself until 1824, when the meagre and inconvenient Courts were built outside it, which in their turn were pulled down in 1883. (See an article by his Honour Judge Willis in the *Cornhill Magazine* for March 1907, p. 320.)

posed to derive a sanction from the wisdom of our forefathers, might well have been deemed by an impartial observer to be expressly devised for the purpose of producing delay, uncertainty, and untold expense.[1]

Let this picture serve as a measure of the gratitude which the present generation owes to Lord Selborne. The path had been largely cleared for him by the first report of the Judicature Commission, the appointment of which he had moved in Parliament in 1867, and on which he had been an active member. The process of amalgamation was largely helped by the approaching erection of the new Law Courts in the Strand, after years of controversy and delay, in which the advantages of a site midway between Lincoln's Inn and the Temple were nearly sacrificed for a grandiose design to beautify the Thames Embankment with a Palace of Justice. Palmer himself, when Attorney-General, had introduced and carried through the Commons the Courts of Justice Act of 1865.[2]

In framing the Judicature Act Lord Selborne had profited not a little by a recent failure. Lord Hatherley's Bill of 1870 [3] was so vague in outline and left so many points without a clear indication of the author's intention, that it aroused general alarm with no corresponding enthusiasm, while the blunder of omitting to consult the judges and other high legal authorities had provoked hostility and rancour.[4] Selborne avoided both these dangers. The scheme of the Bill, though marred by defective draftsmanship, was complete and far-reaching; he had submitted the clauses to the heads of all the existing Courts, to the ex-Lord Chancellors and the law officers, and he subsequently invited comments and suggestions from the judges at large. None the less, he is well justified in claiming that the Bill was absolutely the work of his own hand, without any assistance beyond

[1] *The Reign of Queen Victoria*, i. 282.
[2] 28 & 29 Vict. c. 49. [3] Hansard, cc. 170.
[4] See especially Sir A. Cockburn's pamphlet, *Our Judicial System*, 59.

what he had derived from the labours of his predecessors, and that it passed substantially in the form in which he introduced it.[1]

To this last sentence, however, an important qualification must be added. The Act of 1873 withdrew from the House of Lords their appellate jurisdiction in English cases, though maintaining it for Scotland and Ireland, and made the upper division of the High Court of Justice Supreme in fact as well as in name. The coming into operation of the Judicature Act had been originally fixed for November 2, 1874. It was found necessary, however, still further to postpone it to 1876. In the meanwhile Lord Cairns, who throughout the debates had given Selborne the warmest support, and had now succeeded him in office, brought in a Bill for transferring the Scotch and Irish Appeals to the Supreme Court created by the Act of 1873. National patriotism was excited, to say nothing of the *amour propre* of the Peers, and eventually, much to the chagrin of Lord Cairns, the right of appeal in all cases, English included, was retained as it stood prior to 1873. To what extent litigants have found reason 'to thank God there is a House of Lords,' I am not prepared to say; but Selborne always considered the right of double appeal a blemish in the edifice which he had builded.

His own Act, however, contained another contrivance which lent itself in an almost scandalous degree to the multiplication of appeals. Originally intended as a substitute for the sittings in Banco of the old common law Courts, from which, in comparatively rare event, an appeal went up to the Exchequer Chamber, the new 'Divisional Courts,' consisting of two Queen's Bench judges, were made a common vehicle for the obtaining of a new trial in jury actions. From their decision lay an appeal, as of course, to the new 'Court of Appeal,' causing postponement and expense on a scale beyond anything known at Westminster. Finally in 1890 an

[1] *Memorials, Personal and Political*, i. 298.

Act of Sir Robert Finlay's [1] abolished this *via media*, and ordered motions for all new trials to be brought in the Court of Appeal direct.

Indeed, the first two Judicature Acts as a whole suffered from being almost exclusively the handiwork of equity lawyers. Neither Selborne nor Cairns nor Hatherley had any experience of the ordinary every-day routine of the common law Courts. In Chancery, where the reformers were on familiar ground, the working of the Acts has been in every way admirable, thanks largely, it should be added, to the succession of exceptionally able men who have been appointed to judgeships in that division. Otherwise, however, in the Courts which now compose the King's Bench Division, whose abuses and defects had already been greatly remedied by the Common Law Procedure Act,[2] and where it seemed to many who were by no means *laudatores temporis acti* that a much gentler measure of reform would have sufficed.

Again, the amalgamation of the Exchequer and the Common Pleas with the Court of Queen's Bench was a sacrifice to the goddess of symmetry, the wisdom of which may reasonably be questioned. The three old Courts with their three chiefs, each at the head of his band of puisnes, had much to commend them beside their antiquity. Their rivalry, their *esprit de corps*, and the sense of responsibility which is now distributed among the sixteen judges of the King's Bench Division, did much to maintain the high level of the Common Law Bench, which was never higher than in the 'sixties' and 'seventies.' It is not too much to say that the slackness among some of his puisnes, which was so conspicuous during the later years of Lord Coleridge, L.C.J., would never have been tolerated by the old Chiefs.[3]

[1] 53 & 54 Vict. c. 44.

[2] *Ante*, vol. i. 452.

[3] The final merger of the three Courts and the creation of the office of 'Lord Chief Justice of *England*' was largely the work of Lord Coleridge, and the hand of Nemesis may be detected in the following

And it has been found a matter of no slight practical inconvenience to have abolished two such dignified posts as the Chief Justiceship of the Pleas and the place of Chief Baron without attempting to create any substitute. It is becoming increasingly difficult to find a suitable shelf for a law officer, or a sufficient inducement to quit the Bar for those leaders whose position entitles them to something more than an ordinary judgeship.

And the Judicature did something more. It killed the circuits, to use the word in the old sense, by making the London sittings contemporaneous with them. The subject is of too purely professional an interest to allow of discussion here, and the end must probably have come sooner or later. But ever since the year 1876 the legislature has been floundering in the endeavour to work out the due proportion between the claims upon judicial time of the provincial and of the London business. Meanwhile circuit has become in many places a farce, and the tale of arrears in London mounts higher and higher.[1]

lament, uttered in a letter to Lord Lindley in September 1889: 'If I could have foreseen, as perhaps I ought, how the Judicature Act would have worked, I would have resigned sooner than be a party to it. The steady lowering of the judges of first instance, and the enthroning of the Chancellor upon the necks of all of us, have altered the profession, so far as the common law is concerned, and made success in it, except so far as money-making is concerned, not an object of ambition to a high-minded man. It frets me more than I can tell you to feel that the great place I hold is being let down year by year, and I don't know how to prevent it. . . . I find the great traditional influence of the Chief Justice and the deference accorded to him lessened materially every year, and I get very low and out of heart in consequence' (*Life of Lord Coleridge*, ii. 360, and see another letter to the same correspondent on pages 361-62).

[1] One source of these arrears, the under-staffing of the Judicial Bench, is connected with the Judicature Act in a curious and little-known manner. The Act of 1868 (31 & 32 Vict. c. 125), which transferred the trial of election petitions from the House of Commons to the judges, gave, by way of compensation, an additional puisne to each of the three Courts. From that year down to 1876 there were eighteen common law judges, to the great benefit of the administration of justice. The Judicature Act transferred three of these to the newly constituted Court of Appeal, of which the other members were the Master of the Rolls and the two Chancery Lords

While the pilotage of the Judicature Act through Parliament imposed a heavy strain upon the Lord Chancellor, a formidable increase of judicial work was thrown upon his shoulders. Lord Romilly, the Master of the Rolls, was exceedingly anxious to retire, and, indeed, was prevented by his health from presiding in his Court after Easter 1873. His successor designate was the Attorney-General, Sir George Jessel, but he was in charge of the Bill in the House of Commons, and his services could ill be spared. As a way out of the difficulty Romilly's formal resignation was delayed, and the Chancellor transferred to himself till the Long Vacation the whole of the Rolls business, both in Court and Chambers,[1] and during the ensuing sittings he voluntarily took the place of his friend, Vice-Chancellor Wickens, who was suffering from the malady which brought his career on the Bench to so untimely a close.

Of Lord Selborne as a judge it is impossible to speak too highly. Lord Davey and Lord Lindley, themselves two of the very greatest judicial intellects of the generation which immediately followed his, have contributed to the last volume of his 'Memorials' their estimate of him in language to which it would be presumptuous to add:[2]

First, I should say, wrote Lord Davey,[3] that he was distinguished by a rapid and accurate appreciation of the

Justices. The common law judges again became fifteen in number (raised to sixteen in 1906), but by way of compensation the Chancery judges and the members of the Court of Appeal were put on the *rota* for circuit. Let 'blushing glory' draw a veil, or, in allusion to a once famous anecdote, a waistcoat, over the years that followed. The unwilling intruders went back to their own places—though Lord Justice Bowen took the latter half of the Midland Circuit in the spring of 1893—and the hungry sheep in the Court of King's Bench still look up and are not fed.

[1] The Rolls Court emerged from the Judicature Act of 1881 as one of the Courts of first instance in the Chancery Division; its separate existence was abolished in that year by 44 & 45 Vict. c. 68, and the Master of the Rolls was transferred to the Court of Appeal. The office is now held by a common law or an equity judge indifferently.

[2] *Memorials, Personal and Political*, ii. 439, *et seq.*

[3] *Ibid.* 442 (somewhat condensed).

relevant and material facts, and a rare power of sifting the wheat from the chaff in the complicated mass of evidence and documents which too often fill the appeal books in the House of Lords and Privy Council. This was no doubt partly due to his training and experience at the Bar. But his power of reproducing these facts and documents in a lucid and intelligible form in his judgments was a gift of his own. In these days it was more common for both the House of Lords and Privy Council to deliver judgment at the end of the argument than it is now, and I often thought that Lord Selborne's oral judgments so delivered were quite as good as his written judgments. Secondly I should emphasise his great industry in the performance of his judicial duties. Judgments when he presided were seldom delayed for more than at most a few weeks. . . . his judgments are often a complete commentary on the particular branch of law and recognised as the *dernier mot* on the subject. . . . The third judicial quality in Lord Selborne that struck me was his absolute fairness and obedience to law. All English judges are impartial, but not all have the power of divesting themselves of prejudice. Lord Selborne had this power in an eminent degree. I have argued cases before him in which there were elements of prejudice in my case and in my client's moral conduct in the matter which would not bear examination, but one had the absolute certainty that one's arguments would be carefully considered, and if I could show I was right in law I should succeed. I never knew any judge less disposed to strain the law in a hard case than Lord Selborne. . . . Some critics have thought that his subtlety of mind led him sometimes to give refined reasons for his judgment when it might be rested on plainer or broader grounds. There may be some truth in this criticism, but if it is meant that Lord Selborne was wanting in breadth of legal vision I do not agree.

The late Lord Bowen is said to have applied to Lord Selborne the epithet of ' chirpy,' and to have even likened him to a ' pious cricket on the hearth,' but he was no less distinguished as a judge by dignity and courtesy than by the extraordinary rapidity with which his mind seemed to work : as an eminent counsel once said, he

seemed always a couple of streets ahead of the argument that was being addressed to him, and his extraordinary subtlety, aided by the thoroughness with which he ransacked the material before him, often led to an appeal in the House of Lords being decided on points that had escaped counsel on both sides in the Courts below.

Selborne's first tenure of office was cut short by the Conservative victory of 1874, and he handed over the seals early in February. Writing long afterwards,[1] he expressed his opinion that the determining cause of the sudden dissolution was the difficulty in which the Prime Minister was placed over his Greenwich seat. In the preceding August, after Parliament had risen, Mr. Gladstone had assumed the office of Chancellor of the Exchequer in conjunction with that of First Lord of the Treasury. The question was much debated whether, while retaining the former post, he could be said to have occupied the latter 'in lieu of and in immediate succession to'[2] it, and thus escaped the necessity for re-election, a proceeding which was just then most inconvenient for more considerations than one. Lord Selborne took the view from the first that the Premier had vacated his seat. Baron Bramwell volunteered an opinion to the direct contrary, other eminent authorities were equally divided, and a very uncertain sound came from the law officers. On January 22, 1874, only four days before the date to which Parliament had been prorogued, the news of its dissolution came, like a bolt from the blue, upon the constituencies. Mr. Morley says emphatically[3] 'that in the mass of papers connected with the Greenwich seat and the dissolution there is no single word in one of them associating in any way either topic with the other.' The matter is of no importance now, but the strong assertion of Lord Selborne on the subject, published in September 1898, after his death and

[1] *Memorials, Personal and Political*, i. 326 *et seq.*
[2] See 30 & 31 Vict. c. 102, s. 52.
[3] *Life of Gladstone*, ii. 79.

the death of Mr. Gladstone, revived an old controversy and created a mild sensation.[1]

For the first time since his boyhood Palmer was now entitled to the sweets of leisure, the suggestion that he should accept the post of judge under the Public Worship Regulation Act of 1874 being wisely declined.[2] With the Bill itself, as originally drafted, he was not altogether dissatisfied, but to the shape it assumed under the hands of Lord Cairns [3] and Lord Shaftesbury, he was entirely opposed. His efforts, however, in committee to strengthen the hands of the Bishops met with little response on the Episcopal Benches, or, indeed, anywhere else, and he had to acquiesce in a measure the disastrous consequences of which were not long in declaring themselves.

His attitude to such questions may best be put in his own words:

> My private taste and judgment agreed with those who preferred what was ancient, solemn, or significant in ritual to what was modern, cold, or unmeaning; but neither antiquity nor beauty nor symbolism could reconcile me to what was not lawful; and I knew no law as to such matters binding upon English Churchmen or which they could rightly or safely follow except that of their own branch of the Church contained in the Book of Common Prayer.[4]

Lord Selborne, in fact, was a consistent member of the old High Church party, to whom doctrine was all-important, ceremony of little moment. Through his wife he had been brought into close relations with Bishop Waldegrave of Carlisle, and he was keenly alive to the sterling qualities of the Evangelicals, of the best side of which party that excellent prelate was a shining example.

He was one of the majority of the Privy Council in

[1] Some additional light strongly confirmatory of Lord Selborne is to be found in the *Life of the Right Honourable Hugh Childers*, i. 219, 220.

[2] *Memorials, Personal and Political*, i. 353.

[3] *Supra*, 320.

[4] *Memorials, Personal and Political*, i. 340.

the Folkestone Ritual case, which decided against the lawfulness of the use of the Eucharistic vestments prescribed in the first Prayer Book of Edward VI., and he was deeply incensed at the imputation, due to the loquacity and indiscretion of Sir Fitzroy Kelly, that the judgment was grounded on policy rather than on law; he declares that nothing passed in the most secret deliberations of the Committee which could excuse or account for such a charge.[1]

In 1876 he was induced by Lord Salisbury to act as Chairman of the second Universities Commission, a laborious task which he only accepted with reluctance, and with a very imperfect idea of the scope which its recommendations were eventually to assume. In after years he looked back upon them with anything but complacency.[2] His strength as a chairman lay in the respect entertained for his character, in his distinguished academical career, and in his intense attachment to all that was best in the traditions of his old University. But much water had flowed under Magdalen Bridge since the day when Roundell Palmer resigned his Fellowship, and of the actual operation of the system set up by the Act of 1854[3] he had no practical knowledge. He had little conception of the extent to which iconoclasm pervaded the master minds at Oxford and Cambridge; nor did he foresee, though the hand-writing was almost on the wall, the approaching collapse of English agriculture, which was to work such havoc in the collegiate revenues. The report, which was not signed until Lord Selborne had been compelled by the events of 1880 to resign his post of chairman, unsettled much, but fell behind the hopes of the extreme reformers. And at this moment the cry is coming up from Oxford for a

[1] *Memorials, Personal and Political*, i. 382; *supra*, 318; but *cf.* Mr. Herbert Paul, *History*, ii. 351, and the words of Lord Justice Amphlett there quoted: 'It was a flagitious judgment.'

[2] *Memorials, Personal and Political*, i. 376.

[3] 17 & 18 Vict. c. 81.

third Commission to effect a still more sweeping measure of change.

Except where the legal reforms of his successor were concerned, Selborne found himself in consistent opposition to the Disraeli Government. He disliked and spoke against the Royal Titles Bill of 1876, which inspired him with apprehensions that, he admits, have not been justified.[1] While maintaining his mental balance during the Bulgarian storm that swept so many of his friends off their feet, he detested the Eastern policy of Lord Beaconsfield. Many circumstances combined to make him what the election slang of 1880 called a Russophile, not least among them being the intimate relations of his brother William with both Church and State in the Empire of the Czar. He had always considered the Crimean war a disastrous blunder, he professed no care for the integrity of the Ottoman Empire, and regarded the Treaty of San Stefano without apprehension. To those views he gave strong expression in the House of Lords, and he raised a debate involving constitutional questions of the highest importance over the movement of the Indian troops to Malta, 'in time of peace, without the previous assent of Parliament.'[2] Here he was met by Lord Cairns in one of the most effective of all his speeches; and to the public both in and out of Parliament, who looked to the main issue rather than to the subtleties of a legal argument, it seemed that the Lord Chancellor *in esse* had the best of the encounter.

During these years it is difficult not to feel that Selborne's tone and temper were somewhat influenced by that taint of original sin which the true Peelite could never dissociate from Disraeli.[3] The estimate of the course of events between 1876 and 1880, disclosed both in his contemporary letters and in the maturer reflections of his old age, seldom rises beyond the level of gentlemanly

[1] *Memorials, Personal and Political*, i. 445.
[2] Hansard, ccxl. 187.
[3] See *Memorials, Personal and Political*, i. 478.

but decided partisanship. Nor is it conspicuous either for broadness of vision or in allowance for difficulties, the full extent of which he had no means of measuring.

The downfall of the Conservative ministry in April 1880 brought Selborne back as an indispensable but not very enthusiastic member of the new Government. He had viewed with some concern the Midlothian campaign of Mr. Gladstone, 'a precedent tending in its results to the degradation of British politics,'[1] and it may be doubted whether he was ever thoroughly at home in the Cabinet during his second Chancellorship. The Radical element both in the Ministry and amongst the rank and file caused him perpetual irritation and misgiving. With John Bright personally he was on the best of terms. Their chairs at the Council table were next one another. 'I differed greatly from some of his opinions,' wrote Selborne after the member for Birmingham had quitted the Cabinet, 'and he was unfriendly to institutions which I would have laid down my life to defend. But, nevertheless, the better I knew him, the more my esteem and regard for him grew.'[2] For Mr. Chamberlain, on the other hand, with whom he was to fight shoulder to shoulder in the great campaign against Home Rule, Selborne seems to have entertained at this date a profound distrust, which was not lessened as the clouds gathered more and more thickly over the head of the Cabinet.

'I do not think there was ever so unfortunate a Government,' he wrote in January 1882 to Sir Arthur Gordon.[3] And in a succession of chapters in the 'Memorials,' he tells the gloomy story of the Transvaal, of Ireland, of Gordon. He lays no claim to prescience greater than that of his colleagues; he does not shrink from his responsibility under the Constitution, and he has little to say in praise of his political opponents, Lord Randolph Churchill being his especial detestation. But his defence

[1] *Memorials, Personal and Political*, i. 470.
[2] *Ibid.* ii. 69. [3] *Ibid.* 59.

of the second Gladstone Administration is half-hearted and lacking in the tone of conviction.

He was a strong advocate of 'resolute Government' for Ireland, and some words of his at the Lord Mayor's Banquet with special reference to Mr. Parnell provoked such a demonstration of applause as is seldom heard in the Guildhall.[1] His misgivings as to Mr. Gladstone's agrarian policy did not prevent him from vigorously defending the Land Bill of 1881 when it came before the House of Lords, and from contributing in no small degree to its safe passage. In the most demonstrative letter which Lord Selborne says he ever received from the Prime Minister the latter rendered him emphatic thanks for his 'constant and signal services.'[2] These services, however, had been rendered at a heavy sacrifice. To sit all day from ten to four hearing appeals in the old hall of Lincoln's Inn, and then to hurry straight to the House of Lords to fight a most complicated measure clause by clause would have overtaxed a much younger man. A few days before the end of the session the Chancellor was so unwell in the House that he was compelled to quit the Woolsack. A round robin, in which it is not difficult to detect the handiwork of Lord Granville, implored Lady Selborne to carry her husband away without a moment's loss of time.

We, the undersigned, preferring the room of the Lord Chancellor to his company, request him respectfully to leave London, being of opinion that among us we can conduct the remaining business of the session to a successful issue without his assistance.—*Granville, Kimberley, Carlingford, Northbrook, Spencer.*[3]

[1] 'It is, therefore, and must always be, one of the first, greatest, and most paramount duties of every Government to maintain the authority of law with firmness and steadiness, and without respect to any man who seeks to introduce public disorder into the State, or insists that the law, while it exists, is not to be obeyed' (November 9, 1880).

[2] *Memorials, Personal and Political*, ii. 27.

[3] *Ibid.* ii. 29.

A severe illness, spinal irritation arising from overwork, which prostrated him practically for the remainder of the year, was the penalty for 'drawing an overdraft on the bank of life.' During his absence his judicial duties were to a large extent performed by Lord Cairns.

I do not propose to follow Lord Selborne over the vicissitudes of his Chancellorship. He has left in the last volume of his 'Memorials' ample material for his own vindication, should the performance of so unlikely a duty ever become necessary. In his own more special sphere he co-operated, as we have seen, with his predecessor [1] in passing the Settled Land Act and the Conveyancing Act, and he was sponsor to the Married Women's Property Act of 1881. He took the greatest interest in the 'Rule Committee' of the judges, which adapted the reforms of the Judicature Acts to the every-day life of the Law Courts and laid the corner-stone of those ponderous tomes in white, the 'Annual Practice'; and he ran a couple of supplementary Judicature Acts through Parliament.

But the great event of Lord Selborne's second Chancellorship, if not indeed of his life in the law, was the opening of the new Courts of Justice in the Strand on December 4, 1882. Queen Victoria performed the ceremony in person amidst every imposing accessory that the presence of the judges and the chief officers in Church and State could assure.[2] But the most impressive part of the day's work had been performed at an earlier hour, when, after breakfasting with the Chancellor in the House of Lords, the judges moved in procession for the last time down Westminster Hall, 'taking

[1] *Supra*, 320.

[2] On that, as on other occasions, the wonderfully clear and distinct articulation of the Queen was the admiration and despair of her legal auditory as she read the speech that had been prepared for her. The news of the death of Archbishop Tait, received as the ceremony was beginning, cast a gloom over the proceedings so far as her Majesty was concerned.

solemn leave of that ancient home of English justice.'[1] The fusion of law and equity, the housing of them both under the same roof, the choice of the Strand for their local habitation, were the doing of Lord Selborne more than of any other single man; and the consummation of so many years of toil was fittingly acknowledged by the dignity of an earldom conferred upon him on the morning of the eventful day. He had himself drafted the address which it devolved upon him to present to the Queen, submitting it beforehand to the assembled judges. Passages in it smacking of exaggerated humility were not to the taste of all the hearers. 'Conscious as your Majesty's judges are of their own infirmities,' began one of the paragraphs, and the suave voice of Bowen was heard to object, 'may I suggest, Lord Chancellor, that it might be better to say "of one another's infirmities"?'

When the Gladstone Government fell, on June 9, 1885, the Chancellor was a stricken man, only too glad to be relieved of office. He had suffered the heaviest of all earthly calamities.

On Friday after Easter, he writes, April 10, it pleased God to take from me my wife, the light of my life for more than thirty-seven years.[2]

But though his official career was ended, his retirement from affairs was only for a very brief period. The preparations for a general election on the extended franchise were in full swing even when Lord Salisbury was forming his Cabinet. Among the would-be Liberal candi-

[1] *Memorials, Personal and Political*, ii. 82. It is permissible perhaps to quote from Josephus the solemn voice heard in the ancient Temple at Jerusalem, *μεταβαίνωμεν ἐντεῦθεν*. In the course of a year or two the old Courts were pulled down, and in January 1885 the bomb of a dynamiter was within an ace of destroying the Hall itself. The new Courts of Justice were not actually opened for business until January 11, 1882, and the case of *Bell* v. *Lawes* served to connect the old and new Courts, since it was the last cause tried in the old, and an application for a rule for a new trial therein was the first business transacted in the new building.

[2] *Ibid.* ii. 160.

dates was Viscount Wolmer, the only son of the ex-Lord Chancellor, who had recently come down from Oxford with first-class honours, and who to-day holds the proud position of High Commissioner for South Africa. The Liberal Association, however, in one constituency after another declined to have anything to say to him unless he would give a pledge to vote for Disestablishment. Other signs of the times, including the publication of 'the Radical programme,' with the *imprimatur* of Mr. Chamberlain, and the uncertain sounds that issued from Midlothian, convinced Lord Selborne that a determined assault upon the Church of England, not inferior to that under which the Church of Ireland had succumbed, was in contemplation. In concert with the venerable Earl Grey, he procured and put forward a declaration signed by prominent Liberal Churchmen against this attempt to commit the party to the extreme views of the Liberation Society.

'Gladstone was not pleased,' is the commentary in the 'Memorials,'[1] and that statesman was soon destined to have ground for much more serious displeasure. On Christmas Eve, when the Conservative defeat at the polls had rendered it more than probable that Mr. Gladstone would be called upon to form a third Administration, Selborne received authentic information that his former chief was converted to Home Rule. He lost no time in conveying to him, in the form of a memorandum, shown previously to Lord Northbrook and Lord Spencer, his insuperable objections to the surrender.

The Marquess of Salisbury resigned after the 'three acres and a cow' division of January 26, 1886, and on the following day Gladstone wrote to Lord Selborne,

expressing his reluctance to think of the dissolution of our old political connection or to refrain from 'asking himself, inwardly, whether he could again hope for my co-operation.'[2]

[1] *Memorials, Personal and Political*, ii. 182.
[2] *Ibid.* ii. 203.

A day or two later he brought his former Chancellor up to London by telegram.

> Communication was friendly, but the result was that I did not think the prospect of our agreement about Ireland sufficient to justify me in accepting a place in his Cabinet.[1]

It was the final parting of the ways. The preservation of the Legislative Union between Great Britain and Ireland was, together with the maintenance of the Church of England as by law established, among the causes for which Selborne would have shed his heart's blood. As the Liberal Unionist party took shape and substance he became one of its leading members. Age had not dimmed his powers of advocacy whether by tongue or pen, and his long and honourable record of public service contributed towards making him one of the most effective champions in its ranks. With him the wrench of parting from the old moorings and the old messmates was less acute than with some others. His last years of office had revived in him that distrust of Mr. Gladstone, as a leader to follow, which from one cause or another seems to have haunted so much of his public life.[2] The later developments of Liberalism were opposed to his deepest convictions. And the marriage, a year or two earlier, between Viscount Wolmer and a daughter of the Marquess of Salisbury had brought him into close domestic relations with the House of Cecil.

Neither the merits nor the varying fortunes of the Home Rule campaign have anything but an incidental place in these pages. The treacherous ashen crust scarcely affects to hide the fire below. Beginning with vigorous letters in the 'Times,' and urgent remonstrances to private friends, Selborne soon found himself drifting into the forefront of the battle. 'Stumping' the country became an 'odious necessity, if we are to oppose any resistance at all to the torrent of words which flows con-

[1] *Memorials, Personal and Political*, ii. 203.

[2] See particularly *Memorials, Personal and Political*, ii. 226, 256.

tinuously from Hawarden,' and he was in great request on the platform. In him, as in many other Liberal Unionists who flung themselves into the fray, the fierce joys of unaccustomed combat seemed to work a transformation. Dignified University professors, quiet journalists, reserved men of science, were to be met, haranguing, toiling, perspiring in the dust of contested elections. Few suspected the combativeness or the platform readiness of Lord Goschen until he metaphorically took off his coat at the Opera House meeting of April 1885. And similarly, without losing any of his dignity, Lord Selborne seemed to rub off that primness and air of absorption which rendered him, outside the circle of his intimates, so difficult of approach. The prominent part in Unionist politics taken by his son, both in the House of Commons and without its walls, gave him a new delight and interest, and to the very last his enthusiasm for the cause knew no abatement. Only a fortnight before his death he clapped his hands like a boy and shouted for delight over Lord Valentia's election for Oxford.[1]

Nor was he less zealous in his long duel with the Liberationists. Two books, a 'Defence of the Church of England against Disestablishment,' and 'Ancient Facts and Fictions concerning Churches and Tithes,' occupied his leisure during the years 1886 and 1888. The former of these is still an arsenal of fact and argument, and is marked by a moderation of tone and an air of sweet reasonableness which are unhappily rare in ecclesiastical controversy. The latter of the two has not altogether succeeded in standing the test of recent researches. He addressed Church Defence meetings all over the country, and the Welsh Disestablishment Bills of Mr. Asquith found no more determined opponent. As the first Chairman of the Canterbury House of Laymen he was the mouthpiece of the 'Centre' party in the Church of England, and his faithful dealings with

[1] April 20, 1895 (*Memorials, Personal and Political*, ii. 414).

some of the more advanced wing excited an attention that was not altogether devoid of amusement.

Lord Selborne survived his final resignation of office by nearly ten years, and he sank somewhat suddenly, after a short illness, on May 4, 1895, 'with no farewells, no difficulty—with undimmed eye and clear and vigorous brain,' at the age of eighty-three. He may be said to have fallen with the sound of victory in his ears, for the Unionist party were on the verge of a triumph even more decisive than that of 1886.

CHAPTER XXI

LORD HALSBURY AND LORD HERSCHELL

1825–1908

WITH the final departure of Lord Selborne from the Woolsack begins a fresh chapter in our legal history for the writing of which, on a proper scale and with adequate knowledge, the time has not yet arrived. Lord Halsbury is still with us in a green old age, *nec viget quidquam simile aut secundum*. Lord Herschell was removed by the hand of death at a date when it seemed that his great legal genius and his zeal for the public service would be at the disposal of his country for many years to come. No life of him has yet been written, and many of the transactions, legal and political, in which he took part are so recent, and concern so many who are still living, as to render reticence the better part of discretion.

And though it is impossible to bring these volumes to a fitting close without a brief glance at the personality of Queen Victoria's last two Chancellors by way of epilogue, yet the year 1885 is by no means an inappropriate period at which to ring down the curtain. The public lives of Hatherley, Cairns, and Selborne were entwined almost as inseparably as those of Lyndhurst and Brougham. Between them they had carried through those momentous changes in the substance and the operation of the laws of England which I have attempted to describe in the last few chapters. They gave place, their work accomplished, to successors even further apart from them in training and in ideals than in mere point of age.

(I.) Lord Halsbury (1825–1908).

Hardinge Stanley Giffard, born on September 3, 1825, was the third son of Stanley Lees Giffard, barrister-at-law and journalist. Though a Dublin man by origin, his father was well known in the literary and political world of London as the editor of the 'Standard' newspaper, and, from his boyish years, the future Chancellor must have imbibed sound Tory doctrine. He seems to have been privately educated until his matriculation in March 1842 at Merton College, Oxford, of which University he has been High Steward since 1896. He took his B.A. degree in 1845 with a fourth class in classics, while still under the age of twenty-one, and, having been entered at the Inner Temple at the beginning of the following year, he was called to the Bar on January 25, 1850.

He began his professional life by joining the South Wales Circuit, and he soon combined a rising practice there with a regular attendance at the Central Criminal Court. The Old Bailey Bar, where, according to Lord Macaulay, 'advocates have always used a licence of tongue unknown in Westminster Hall,'[1] has not often proved the nursing mother of a Lord Chancellor. Lord Brampton, writing of a period not very much before Mr. Giffard's arrival on the scene, describes the Court as 'a den of infamy the associations of which were enough to strike a chill of horror.' He adds, however, that it was the best school in the world at which to learn the work of cross-examination and re-examination,[2] and Giffard was an apt pupil; nor has he ever shown any disposition to disparage the scene of his early toils and triumphs. It was then, and continued for some time afterwards to be, a very close borough, and it argued no small pertinacity and determination for a young counsel to elbow himself into practice by the side of Ballantine and Wilkins and

[1] *History of England*, i. 447.
[2] *Reminiscences of Sir Henry Hawkins*, 25.

Huddleston. Giffard's success, however, connected as he was through his wife with one of the leading firms of Old Bailey solicitors,[1] was not long in doubt. After graduating as the prisoner's friend he worked his way up to the position of one of the standing counsel for the Treasury, his junior being the present Sir Harry Poland, with whom he shared chambers in the Temple; and in 1865 he attained the rank of Queen's Counsel. In 1867 he is to be found defending successfully some of the prisoners charged with picketing during the great tailors' strike; he appeared on behalf of Governor Eyre in the unfamiliar venue of Market Drayton Sessions. He was for the Crown, together with the law officers (Karslake and Brett), in the Clerkenwell explosion case. He was briefed for some of the defendants in the Overend and Gurney prosecution, and at the Cardiff summer assizes of 1869 he snatched a verdict from Mr. Grove, Q.C., in the once notorious case of Esther Lyons, who, it was alleged, had been enticed away from her Jewish home for purposes of proselytism. The elevation of Mr. Grove to a judgeship in the Court of Common Pleas in 1871 left him in undisputed possession of the lead on his circuit.

But of all the cases in which he was engaged the ejectment action of Tichborne *v.* Lushington was the most famous. Mr. Giffard, Q.C., was led in it by Serjeant Ballantine on behalf of the Claimant, and his examination-in-chief of that worthy is a masterpiece in an art the difficulties of which are strangely underestimated outside the legal profession. Taking his client in hand after a decidedly slipshod opening from the Serjeant, and after his best witnesses had been badly battered for ten days by Sir John Coleridge and Mr. Hawkins, he skilfully spliced the unravelling strands, and coaxed 'Sir Roger' into a plausible and almost coherent narrative of his

[1] Montagu Williams's *Leaves of a Life*, i. 73. Giffard had married, in 1852, the daughter of Mr. William Conn Humphries. She died without leaving children in 1873, and in the following year he married Miss Woodfall of Stanmore, Middlesex, by whom he has issue a son and daughter.

strange adventures. With an exception to be shortly noticed, he did not take a very prominent part in the rest of the trial; he was away on circuit when the collapse came; but I have reason for believing that Ballantine's acceptance of a non-suit was made without his consent or approval, and that Lord Halsbury is still of opinion that had an adverse verdict been returned in the ordinary course, a motion for a new trial would have had a very fair chance of success.

The strength of Giffard's advocacy lay emphatically in the man himself; he owed little to external advantage, he could lay no claim to the stately and gracious presence of a Copley or a Thesiger, nor to the bulk and height which often enable inferior men to impose themselves physically upon witnesses and jury. He had not the silvery voice of a John Duke Coleridge, nor the consummate dramatic power of a Henry Hawkins. But there was a virile force, a combativeness, a strength of conviction and a pertinacity which carried all before him; he was absolute master of his trade, and he possessed, as the world came later to recognise, an innate genius for law. 'He had one of those happily constituted intellects,' to quote Macaulay again,[1] 'which across labyrinths of sophistry, and through masses of immaterial facts, go straight to the true point.' He had an intuitive instinct for the essentials of a case, and a corresponding dislike for the verbiage in which they are too frequently enveloped. It is told of him that he received a special retainer one morning in London on behalf of a prisoner charged with some very complicated fraud, whose trial was fixed for that very day at Winchester. He had just time to catch the train at Waterloo, and with the verbal information gleaned from the solicitor in a first-class carriage he put up an admirable defence. 'Facts with-

[1] *History of England, loc. cit.* The passage relates to a very different personage, and I can only hope that the appositeness of the words will excuse me for applying to Lord Halsbury the reluctant encomium pronounced by the great Whig historian on Sir George Jeffreys.

out comment ' were what he demanded in his instructions, and he has been heard to advise young barristers not to be the slaves of their brief. Too much reading and not enough thinking, he added, lie at the root of many a failure in advocacy.

Thoroughgoing in the discharge of his duties, he was invariably courteous alike to those associated with him and to those opposed to him. He was endowed by nature with a kindly disposition which success could not spoil, and he was imbued with a high sense not only of his own responsibilities, but of the traditions and the prerogatives of the English Bar. Show him anything mean or tricky and 'his soul abhorred it as the gates of hell.' The memory still survives of the scathing rebuke which he administered in the robing-room of the old Courts at Westminster to a young barrister who had been guilty of some very dubious professional conduct in a case in which they had both been engaged. He was absolutely fearless and independent, and the judge or counsel who attempted to quell or set him down was speedily made aware of the futility of the endeavour. No better illustration of this can be given than the passage of arms between himself and Sir John Coleridge on one of those gloomy days when the case for the Tichborne claimant was visibly breaking up.

It was February 7, 1872, and the Attorney-General, in the full flush of impending triumph, had begun the morning by reading a letter obtained *sub poenâ duces tecum* from a reluctant solicitor in which the identity of 'Sir Roger' with Arthur Orton was advanced by a long stage. He improved the occasion by calling upon counsel for the Claimant to throw up their briefs, under penalty of being involved in the guilt of their client, and he enforced the appeal by insisting that he spoke, 'however unworthily,' as head of the English Bar.

Neither Ballantine nor Giffard was in court at the moment, but after the midday adjournment they made their presence felt very effectively. Ballantine dwelt

sarcastically upon the 'accident' of the 'Colliery explosion' which had brought the Attorney-General into his present position,[1] and Giffard gave vent to his indignation in a spirit not unworthy of Erskine:

I find this is attributed to the Attorney-General, as having been made applicable to counsel in this case—'lawyers who after the demonstration of the iniquity and injustice and groundlessness and fraud of a claim (if it be demonstrated to their minds) lend themselves for one moment to the prosecution of it, make themselves accomplices in the guilt of the person whom they represent.' As an abstract proposition it is perfectly unobjectionable; as applicable to the facts of this case it would probably convey to the minds of everybody who read it an insinuation against the members of the Bar who are against him on this occasion. I can only say that the Attorney-General has referred to his character as Attorney-General. In this Court he is simply the counsel representing one of the parties, and he has no greater authority than any of the most junior members of the Bar present. I utterly refuse to have my conduct dictated, or insinuations made against me, by the Attorney-General or any other member of the Bar. If that is not meant I have no more to say. I think nine out of ten people would have supposed that the Attorney-General meant to say my learned friends and myself were concerned in what we considered a fraudulent case. I will not characterise that assertion, but your Lordship will well understand how I *would* characterise it.[2]

Though retained either for the Crown or the defence in most of the great criminal cases of the day, Mr. Giffard had now emerged into a fine business at Nisi Prius, and his gifts found a most appropriate vent in the conduct of election petitions.[3] His ability to accept retainers in these cases was due to the singular want of success which attended his own efforts to enter Parliament. In March 1868 he was beaten at Cardiff, and a similar fate attended him in the general election of 1874, though on the latter

[1] *Vide supra*, 368.

[2] *Tichborne* v. *Lushington*, shorthand notes, pp. 4433 and 4465.

[3] See Montagu Williams's *Leaves of a Life*, i. 270.

MR. HARDINGE GIFFARD, Q.C.

From a photograph

occasion he came within nine votes of the sitting Liberal member. He had made his mark, however, as one of the most conspicuous and able of the Conservative lawyers, and when Sir Richard Baggallay was appointed Lord Justice in November 1875, and Holker succeeded him as Attorney-General, the vacant post of Solicitor-General was offered to Mr. Giffard, though he was without a seat in the House of Commons. His effort to secure election for Horsham in the following year was unsuccessful, and it was not until March 1877 that he was returned for the little Cornish borough of Launceston.

Sir Hardinge Giffard's promotion was a most popular one, and he made an excellent law officer; he was Solicitor-General for rather more than four years, and during that period it devolved upon him to represent the Crown in several sensational cases, of which the best remembered are the 'Franconia' running down case,[1] that store-house of legal conundrums, the Penge murder, and the prosecution of the detectives Meiklejohn, Druscovitch and Palmer for complicity in the frauds of the convict Benson. As a debater in the House of Commons the Parliament of 1874–1880 gave him no great scope, and it was not until the formation of Mr. Gladstone's second Cabinet that his opportunity came. It was he who, on June 22, 1880, carried an amendment in the Bradlaugh debate against the full force of the Government and administered a shock to the Administration, then not two months old, from which it never entirely recovered.[2] From that time onward he was one of the leading spirits in the fighting wing of a minority as small in numbers as it was conspicuous in Parliamentary talent. Lord Halsbury is a Tory to the finger-tips; he is one of those fortunate spirits to whom in the sphere of politics and religion doubt is unknown and unthinkable; with due allowance for changed conditions he is the lineal descendant of Lord Eldon. Perhaps his most conspicuous achievement was

[1] Reg. *v.* Keyn, L.R. ii. Ex. Div. 63.

[2] Hansard, cclxiii. 455, and *Life of Lord Randolph Churchill*, i. 130.

in the debate on the Aston riots of October 1884.[1] Mr. Chamberlain had been flatly charged by Lord Randolph Churchill with a previous knowledge of the 'counter-demonstration' which so narrowly fell short of manslaughter, and the impeached minister had retaliated in a brilliant speech.

When he sat down he had in great measure stemmed the tide which had been running strongly against him. As his speech was drawing to a close Lord Randolph leaned across the gangway and asked Sir Michael Hicks-Beach if he would reply. Sir Michael, much impressed by Mr. Chamberlain's argument, declined; but Sir Hardinge Giffard, to whom Lord Randolph then turned, stepped into the breach, and with little premeditation made a most admirable and effective rejoinder which swayed the opinion of the House and threw the gravest doubts upon the authenticity and credibility of the documents from which Mr. Chamberlain had quoted.[2]

This great debating effort played no inconsiderable part in the future fortunes of the speaker. Within eight months Mr. Gladstone's Government had fallen, and Lord Salisbury was engaged in Cabinet making under conditions of unusual difficulty, not the least of which was the disposal of the Great Seal. Lord Cairns had died in April; Sir John Holker, his natural successor, had predeceased him by three years. It seems strange to the present generation that any doubts could have arisen as to the fitness of Sir Hardinge Giffard, but it should be remembered that for seventeen consecutive years the Woolsack had been occupied by a series of consummate equity lawyers, and that to the mind of Lincoln's Inn the ex-Solicitor-General was still affected with the associations of the Central Criminal Court. But the real pinch was elsewhere; Lord Salisbury and Lord Randolph Churchill were contending for the mastery, and the former, if legend be true, was desirous of entrusting the Queen's conscience to Sir Baliol Brett, the Master

[1] Hansard, ccxciii. 619.
[2] *Life of Lord Randolph Churchill*, i. 368.

of the Rolls, shortly afterwards created Lord Esher. Brett had been for a short time law officer under Lord Derby and Mr. Disraeli, was an admirable judge, and a perfectly 'safe' politician. But he savoured of 'the old gang,' and to Lord Randolph's imagination represented one more weight in the hostile balance; the Secretary for India pressed the claims of Sir Hardinge Giffard and carried them through; no small argument in his favour must have been the heavy pecuniary sacrifices to which his candidate had been put in electioneering. It is interesting to reflect that in after years the Chancellor thus forced upon him became one of Lord Salisbury's staunchest friends and most trusted counsellors.

Sir Hardinge received the seals on June 24, 1885; he took his title from the manor of Halsbury in Devon, which had been the home of the Giffard family in bygone generations. He quitted the Bar in the heyday of his fame. The disappearance of Holker had left him perhaps the most successful advocate of his day in that class of case where the appeal is to the sentiment, the emotions, or the prejudices of the jury; an admirable speaker and a fine cross-examiner, his pugnacious and combative spirit was kept in strict subordination to the needs of the hour, while it used to be said of him that he was the only man at the Bar who would stand up to Mr. Charles Russell with absolute and unmistakable confidence. In the Belt and Lawes case[1] he won against the latter a 5,000*l.* verdict for the plaintiff, from which, however, the defendant was destined to reap little benefit. But long before his appointment as Lord Chancellor, solicitors had recognised that there were very few actions in which Sir Hardinge Giffard's extraordinary gift for seeing into the heart of a case, and for mastering its details by intuition, were not well worth a retainer. Thus he constantly appeared in cases involving every sort of legal complexity which were of no interest to the world at large and of immense interest

[1] *Annual Register* 1882, 59; Montagu Williams's *Leaves from a Life*, ii. 221.

to the parties concerned. His last appearance in Court at the Old Bailey was in November 1884, under curious circumstances. He had acted as counsel in a probate action arising out of the testamentary dispositions of an eccentric citizen of Leominster in Herefordshire. His clients were not only unsuccessful, but were committed for trial on the charge of perjury. Rightly or wrongly Sir Hardinge believed that he had not done them full justice in the hearing before Sir James Hannen,[1] and he insisted on defending them, devoting to the task, as I have been told by one of his juniors, his whole time and attention during a trial which lasted eight days, and eventually returning his fees. While thus engaged he received his last retainer in a criminal case on behalf of an eminent Church dignitary who had been most unjustifiably charged with a terrible offence ; the Grand Jury, however, ignored the Bill, and his services were not called into active requisition.

Lord Halsbury's first Chancellorship lasted for a little over six months ; he went out with his party in January 1886, and came back with them in the following July. He went out again in the August of 1892, to return in August 1895, and he retained the seals until December 1905, undisturbed by the death of Queen Victoria or the resignation of Lord Salisbury. His years of office, all told, were seventeen, a total which has been exceeded only by Lord Eldon and Lord Hardwicke.

Whether regarded as a lawyer or a politician Lord Halsbury is one of the most impressive figures of the

[1] It was not always easy to get Sir Hardinge Giffard to read his brief. There is a story that on a certain occasion when he was retained in an election petition it was discovered by his juniors the evening before the commission opened that he had neglected this precaution. The party were staying in a big country house, the owner of which was an ardent politician, and immediately after dinner Mr. Giffard, Q.C., was conducted to the billiard-room in company with the brief, and the key was turned upon him. Three hours later the party returned to release him, and found him peacefully asleep on the settee, with the brief, a remarkably bulky one, as his pillow. For his views on the subject of briefs *vide supra* 437.

Victorian era, and the author of the Criminal Evidence Act of 1898 and the Land Transfer Act of the preceding year has no small claims to consideration as a legislator. Like Lord Lyndhurst, he had incurred the reputation at the Bar of being somewhat indolent and inclined to pick up his law as he went along. On the Woolsack he astonished counsel and public alike by his grasp of principles and intimate knowledge of reported cases. As a matter of fact the great variety of his practice at the Bar had brought him into contact with almost every conceivable branch of law; he was not always easy to arouse, but when once curiosity was excited his interest in any new matter was unrestrainable. It was noticed, on his somewhat rare appearances in Chancery, that however listless and bored he might be at the beginning of the case his reply showed the utmost professional enthusiasm as well as complete mastery of the facts and of the law involved. It may be doubted whether he has ever been excelled in quickness of apprehension or in the power of accurate recollection.[1]

One who is perhaps the highest living authority at the English Bar has been heard to maintain that Lord Halsbury is, in the widest sense, the greatest master of the common law since Mansfield. In two notable respects, certainly, he has exercised a remarkable influence over the judicial temper of the House of Lords. He has enforced to the utmost of his power the principle that written documents should be construed as intending what they actually say, and he has always acted on the maxim that you must settle what are the real facts of the case before you begin to apply your law. Both for the shrewd common sense of their substance and the terse vigorous language in which they are expressed, his decisions need not fear comparison with those of the ablest of his predecessors.

[1] At the time when the Lambeth Judgment on the Bishop of Lincoln's case was before the Privy Council, Archbishop Benson told me that the Chancellor's intuitive grasp of the points at issue was the most marvellous thing he had ever witnessed.

He seems, indeed, to throw off law spontaneously, and many of his *obiter dicta* in the course of an argument are worth a considered judgment from a lesser man. During his tenure of office the court of final appeal was unusually strong, but Lord Halsbury was completely master in it. He never shrank from consequences, and was never moved by the fact that the keenest intellects among his colleagues might be in opposition to him. In the great case of Allen *v.* Flood,[1] when Lords Ashbourne and Morris alone supported him against Lord Watson, Lord Herschell, Lord Macnaghten, Lord Shand, Lord James of Hereford, and Lord Davey, he declared his conviction that in denying the plaintiffs a remedy the majority of the House were 'departing from the principles which have hitherto guided our Courts in the preservation of individual liberty to all.'

As a debater, whether in office or in opposition, he has been and is still a tower of strength to his party. The frigid atmosphere of the Upper Chamber never seemed to chill his vigorous temperament; from the first he gained the ear of the House, and in his later years as Chancellor his sway became that of a benevolent but somewhat testy despot. The comparatively recent occasion on which he gave the occupants of the Episcopal Bench the benefit of some exceedingly candid advice is not likely to be forgotten.

The secrets and mysteries of the Cabinet are, or ought to be, as inviolable as those of Freemasonry, but it is widely believed that round the table at No. 10 Downing Street the Chancellor wielded an influence quite equal to that exercised by him in the House of Lords. His courage, consistency, and contemptuous disregard for the popular voice were the very qualities to win the approval of Lord Salisbury, to whom he was still further commended by his keen and purely non-professional interest in European history and foreign politics. And when from one cause or another the elder statesmen

[1] Law Reports (1898), App. Ca. 1.

dropped out from the ranks, leaving him almost the only survivor of the Cabinet of 1885, he may well have, in the language of Private Ortheris, regarded with some little impatience ' the children they make sergeants of nowadays.' It was current gossip in the London clubs how, some months before the Russo-Japanese war, when the purchase on behalf of the English Government of the two Chilian armed cruisers was proposed in the Cabinet, the Chancellor of the Exchequer raised a host of formidable objections. *The* Chancellor thumped his fist upon the table and said that if the money was wanted the money must be found. And those Chilian cruisers have hoisted the British flag since the autumn of 1903.

No English Chancellor has ever had the distribution of so much patronage. In the Queen's Bench division he has made seventeen judges,[1] in the Chancery Division eight,[2] in the Probate Division three.[3] The Lords Justices of the Appeal Court are appointed by the Prime Minister, but not, we may be assured, without consultation with the Chancellor, and during Lord Halsbury's tenure of office nine vacancies in that tribunal were filled up. Without verifying the figures I may say that he must have appointed at least forty County Court judges. The judicial bench of to-day is practically his creation, and his mark has been writ large on the administration of justice throughout England and Wales. It would be unbecoming in me to offer any criticism as to the way in which that patronage has been exercised.

In 1898 an earldom was conferred upon him, and his son bears the courtesy title of Lord Tiverton. In

[1] Sir Wm. Grantham, Lord Collins, Sir J. C. Lawrance, Sir Arthur Charles, Sir R. S. Wright, Sir R. Vaughan Williams, Sir E. Ridley, Sir J. C. Bigham, Sir C. J. Darling, Sir A. M. Channell, Sir Walter Phillimore, Sir T. T. Bucknill, Sir Joseph Walton, Sir A. R. Jelf, Sir R. M. Bray, Sir A. T. Lawrence, Sir H. Sutton.

[2] Sir A. Kekewich, Sir J. W. Byrne, Sir M. Ingle Joyce, Sir H. H. Cozens-Hardy, Sir G. Farwell, Sir H. B. Buckley, Sir C. Swinfen Eady, Sir T. R. Warrington.

[3] Lord St. Heliers (Sir F. Jeune), Sir Gorell Barnes, Sir Bargrave Deane.

his green old age he has found solace in the game of golf, and he has made work for himself by undertaking the superintendence of a monumental digest of the Laws of England, the first volume of which has just appeared. In the House of Lords, amid sadly altered circumstances, he still upholds the oriflamme of the stern, unbending Tory, but since the great rout of January 1906 he has had to swallow with a wry face more than one unwelcome draught. Yet his faith remains unquenched; he is unshaken in his convictions, and in his confident expectation of better days. Only last December I had the privilege of hearing him address a gathering of the militant forces of the Conservative party with all the fire and contagious enthusiasm of youth, and as these sheets were passing through the Press he made the speech of the occasion at a densely crowded meeting in the City of London assembled to protest against the Licensing Bill.

(II.) Lord Herschell (1837–1899).

Farrer Herschell first saw the light at Brampton in Hampshire on November 2, 1837—*cras animarum*, the first day of Michaelmas Term, as he was fond of recalling—and he thus affords, I believe, the only instance of the Chancellorship being held by one born in the reign of the sovereign whom he served in that office. His father, Ridley Herschell, was by birth a Polish Jew, the native of a little town in Prussian Poland. The name 'Haim,' by which the son of Judah of Strzelno was called among his own people, signified 'Life,' and was given him in reference to the miraculous escape of his mother a few hours before his birth. It was in the April of 1807, the year of Eylau and Friedland, the French were in hostile occupation, and a cannon ball, fired into the room where the poor mother was lying, struck the wall close to the head of her bed.[1]

The Herschells boasted a lineage remarkable even

[1] *Dict. Nat. Biog.* xxvi. 274.

among the children of the Covenant; it was claimed for them that they were among the families that had never returned to Jerusalem after the Babylonish captivity. Young Haim himself sat at the feet of his grandfather, the learned Rabbi Hillel, and waxed mighty in all the learning of the Hebrews. At the age of twenty-three, when studying in Paris, he became a convert to Christianity in circumstances through which he always saw the direct finger of providence.[1] In 1830 he was baptised at St. James's, Westminster, by Blomfield, Bishop of London. His sponsors were Miss Farrer, her brother, Mr. Oliver Farrer of the famous firm in Lincoln's Inn Fields, and the Rev. H. C. Ridley of Hambledon in Buckinghamshire. Haim Herschell took Ridley as his own baptismal name, and seven years later bestowed that of Farrer upon his son in recognition of the many acts of kindness which he had experienced from members of that family.

Cut off from his home by his 'apostasy,' the elder Herschell devoted himself to evangelistic work, and took a leading part in the foundation of the Society for promoting Christianity amongst the Jews. Without formally joining any of the Nonconformist bodies, he opened a chapel in London and gathered round him a numerous congregation. He was married on September 29, 1831, to Helen Skirving Mowbray, the daughter of an Edinburgh merchant; the issue of their union included, besides the subject of the present memoir, Lady Burdon Sanderson, whose privately printed memoir of her father tells the story of a very remarkable life. Mrs. Herschell died in 1853, and a few years afterwards he took for his second wife Miss Esther Fuller Maitland, of Park Place near Henley, the daughter of one of his earliest and staunchest patrons.

It was a Herschell tradition that Farrer, from the age of six or seven, never swerved in his resolution to make the law his profession, and that his brothers and sisters used to tease him by asking what title he proposed

[1] *Memoir of Ridley Herschell*, by Lady Burdon Sanderson.

to assume as Lord Chancellor. His early education was received at a grammar school in the suburbs of South London, and in his fifteenth and sixteenth years he attended lectures at the University of Bonn. From his highly accomplished mother he inherited a great gift for languages as well as a passion for music. Though in later life he became a member of the Church of England, and was for a time churchwarden of St. Peter's, Eaton Square, the religious environment of Farrer Herschell's boyhood was prohibitive against his taking the tests required at Oxford and Cambridge. In 1855 he matriculated at London University and became a pupil at University College, Gower Street, the same institution at which, ten years earlier, Walter Bagehot had been one of a brilliant band of students.

Herschell graduated B.A. in 1857, with honours in Greek and mathematics, and prizes in logic and political economy. Among his contemporaries were Sir Arthur Charles, afterwards one of the Judges of the High Court and Dean of Arches, and Sir Ralph Littler, K.C. In conjunction with the latter he edited a 'University Review,' an article in which procured him an unsolicited introduction to Lord Brougham, and he was one of the best speakers in the University Debating Society. He retained through life a fond attachment to his *Alma Mater*; he frequently served her as examiner in law; in 1883 he became a member of the Senate, and in 1894 he was appointed Chancellor.

He was admitted a student of Lincoln's Inn on January 12, 1858. He read conveyancing with Jacob Waley, and acquired the art of special pleading in the chambers of Thomas Chitty, the successor of Tidd, who turned out judges much as Routh used to turn out senior wranglers. Thence he migrated in due course to Mr. James Hannen; his fellow pupils were two young men, lately 'come down,' the one from Oxford, the other from Cambridge, Charles Bowen and A. L. Smith. Twenty years afterwards a judgeship in the Queen's

Bench Division, which had been declined by Herschell, was accepted by Bowen, who subsequently became Lord Justice and a Lord of Appeal, while the post of junior counsel to the Treasury which he thus vacated was given to 'A. L.,' the first step on the path to the Mastership of the Rolls. It may be doubted whether any pupil room can beat that record of coincidence.

Herschell was called to the Bar on November 17, 1860, and he elected to go the then undivided Northern Circuit, where work was most plentiful, but also competition was most keen.

Although absolutely without any interest or professional connection whatsoever, writes his intimate friend, Mr. Victor Williamson, by his ability and close adherence to business he soon attracted attention, but five or six years passed without his attaining to any substantial practice.[1]

It was in this dark period of his fortunes that he and Lord Selby, then Mr. Gully, and Charles Russell, afterwards Lord Russell of Killowen, were dining one night at their lodgings during the Liverpool assizes. As Herschell was fond of recounting, he announced to his companions in despairing mood his half-formed determination of quitting England and trying his fortune at the British Consular Courts in China. Gully expressed a similar intention with regard to the Indian Bar; what Russell said his biographer does not record.[2] This conclave of a future Lord Chancellor, a future Lord Chief Justice, and a future Speaker of the House of Commons might have been paralleled on the Western Circuit in 1783, when the younger Pitt, Grant, [3] and Mitford [4] are said to have been left stranded together at the mess table while their more fortunate comrades were eyes-deep in briefs and consultations.[5]

[1] *Journal of the Society of Comparative Legislation*, July 1899, p. 207.
[2] *Life of Lord Russell of Killowen*, by R. Barry O'Brien, 76.
[3] Afterwards Master of the Rolls.
[4] Chancellor of Ireland and the first Lord Redesdale.
[5] *Law Magazine*, xxviii. 55.

Like Russell, Herschell practised in the Passage Court at Liverpool, and by slow degrees work began to come to him. On occasion he defended prisoners at Newcastle and Durham and Carlisle with conspicuous success. After he had obtained an acquittal in an apparently 'dead case' of child murder at the last mentioned assize town, Baron Bramwell, at whose request he had acted, paid him a high compliment.

> The prisoner at the Bar has not apparently a friend or a shilling in the world, but no wealth or position could possibly have bought for her a more able, a more eloquent, a more zealous defence than that which has been made on her behalf.[1]

He noted briefs and hunted up cases for Edward James and Quain, and he acquired the reputation of a steady, safe, and industrious junior always sound in his law. He got on well enough with his companions at the Bar, but nature had given him neither the spontaneous gaiety nor the easy familiarity which make 'the popular man.' A certain primness of demeanour which was innate in Herschell, together with a peculiar cut of the whisker, suggested a comparison with an undertaker. The advertisements of George Shillibeer, inventor of the omnibus and pioneer of inexpensive funerals, were a feature of the period, and Herschell was promptly dubbed after him. The mess poet enlivened Grand Court with a parody of Uncle Toby's favourite 'Lilliburlero,' of which the refrain ran, *Shilliburlero-Bullen-and-Leake.*[2]

His first move upwards arose out of the elevation of Mr. Hannen to the Bench in February 1868. This left the field open to several of the leading juniors, who promptly took silk, and in their turn liberated a great deal of lucrative business. In the Liverpool summer assizes of 1869 Herschell had eighteen briefs in important mercantile causes.[3] It was here that his especial strength

[1] *Per* Lord Selby in *Law Quarterly Review*, xv. 123.

[2] Bullen and Leake's Precedents of Pleadings was then and for years to come a sort of 'whole duty of man' for the common lawyer.

[3] *Journal of the Society of Comparative Legislation, loc. cit.*

lay; but highly effective with a jury, and admirable in the conduct of a case, there was no department of advocacy in which he was not at home. He possessed an almost unerring power of judgment and a remarkable knowledge of mankind, which made him in his quiet style a formidable cross-examiner. Equally acceptable to the judge before whom he came and to the solicitor who instructed him, few counsel at the Bar were better suited for a big intricate matter of mingled fact and law.

Within a year or two it became recognised that the three most rising men on the Northern Circuit were Holker, Charles Russell, and Herschell. In 1872 he was made a Queen's Counsel, every common law judge upon the Bench backing his application.[1] There had been a great clearance among the leaders: Brett, Mellish and Quain had been raised to the Bench, Manisty had left the circuit, and Edward James [2] was dead. A year or two earlier, when Russell was about to apply for silk, a friend said to him 'You have formidable competitors—Holker, Herschell.' 'Oh, John Holker,' replied Russell, 'I admit that he is a better man than I am, but then he won't stay long; but Herschell! you surprise me. I tell you honestly I never dreamt of him as a competitor of mine.' Not long afterwards, when Russell was asked whom he regarded as his most dangerous antagonist, he simply answered 'Herschell.' And he often attributed the smoothness and rapidity with which the work was got through in the circuit to the excellent relations between Herschell and himself. 'We were both quick,' he told Mr. Barry O'Brien,[3] 'we lost no time in coming to the point, and we kept to it. We understood and trusted each other.'

'John Holker,' still more familiarly known as 'Jack,' left the circuit in 1874. The keen eyes of Mr. Disraeli,

[1] *Law Quarterly Review, loc. cit.*

[2] To be carefully distinguished from the trio of Jameses, Edwin (of unhappy memory), W. Milbourn (the Lord Justice), and Henry (now Lord James of Hereford).

[3] *Life of Lord Russell*, 89, 94.

directed, as may not unfairly be supposed, by the head of the house of Stanley, selected 'the quarter sessions man' as his Solicitor-General. Holker, who died in 1882, after a brief tenure of the office of Lord Justice, gracefully conferred upon him by Mr. Gladstone, 'to smooth the pillow of a dying man,' has been already well-nigh forgotten. Yet next to Erskine and Scarlett he was probably the greatest verdict getter at the English Bar. 'A tall, plain, lumbering Lancashire man who never seemed to labour a case, nor to distinguish himself by ingenuity or eloquence,'[1] there was no counsel in the land from whom he could not snatch the verdict when once put on his mettle.

Herschell, who had been appointed Recorder of Carlisle in 1873, made his entry into political life almost accidentally. After the general election of 1874, in which he had taken no active part, he had been retained for the sitting Liberal members, both in Durham City and in the northern division of that county, against whom petitions had been presented. In neither case were his efforts successful, but he so delighted and impressed the leading Liberals of the former constituency, that they selected him as one of their candidates at the ensuing by-election in June, when he headed the poll, the other Liberal winning the second seat.[2]

Herschell made himself felt in the House of Commons almost from the beginning, and there was an air of quiet conviction about his delivery which raised him far above the ruck of political lawyers, of whom it has been said that you cannot help hearing the rustle of their silken gowns.[3] His party was in a depressed minority, and his services as

[1] Quoted in *Dict. Nat. Biog.* xxvii. 133, source not stated.

[2] According to Mr. Barry O'Brien the first choice of the Durham Liberals fell on Charles Russell, who had been briefed in the petition on the opposite side, but it was thought on reflection that a Roman Catholic would be handicapped in a cathedral city (*Life of Lord Russell*, 117).

[3] As recently as February 19 of this year 'Toby M.P.' alludes to Herschell's instantaneous success, see *Punch* of that date.

a most assiduous attendant in Parliament, and a willing and ready debater, soon attracted the attention of his leaders. In the session of 1876 he made a most forcible speech in support of a motion condemning the Fugitive Slave Circular recently issued by the Admiralty.[1] He convinced himself that the summons of the Indian troops to Malta in April 1878, without the previous sanction of Parliament, was a breach of the Constitution, and he persuaded Lord Hartington to move an ineffectual vote of censure;[2] in this debate also Herschell distinguished himself highly. In the course of his practice at the Bar the conviction had been forced upon him that the action for breach of promise was evil in its tendency and mischievous in its results. He regarded it as a perpetual fount of extortion and blackmail, and in May 1879 he moved a resolution in favour of its abolition, except in cases where actual pecuniary loss had been incurred. Strong opposition, however, was displayed from both sides of the House, and in spite of his assurance that, every day, actions were brought where no promise had been made, and, every day, actions were brought to redress no real wrong or injury, the motion was rejected by 106 votes to 65.[3]

When Gladstone formed his second Administration, the name most freely mentioned for the office of Solicitor-General was Mr. Watkin Williams, Q.C. But the choice of the Prime Minister, to the satisfaction alike of Lord Hartington and Lord Selborne, fell upon Herschell without any hesitation, and he was duly knighted on May 13, 1880. His senior colleague, Lord James of Hereford, then Sir Henry James, A.G., has written an interesting and generous appreciation of him in his new sphere, from which I quote the following passage:[4]

[1] Hansard, ccxl. 264.

[2] *Journal of the Society of Comparative Legislation*, July 1899, 201.

[3] Hansard, ccxlv. 1867, and see *ib.* ccxxvi. 145 for a most valuable clause introduced by Herschell into the Merchant Shipping Act of 1875 under which the shipowner or the master who sent or took out an unseaworthy ship to sea is guilty of a misdemeanour.

[4] *Journal of the Society of Comparative Legislation, loc. cit.*

The very nature of the Solicitor-General's services prevented the extent of his labours from being fully known. In preparing the Bills to be introduced by the Government, in determining upon the principles they were to enforce and the form in which they were to be presented, his services were invaluable. In the passage of many of these Bills through the House of Commons he unostentatiously gave the greatest assistance. Over and over again Mr. Gladstone has been heard to acknowledge the value of the services rendered by the Solicitor-General while the Irish Land Act of 1881 was passing through committee. During the Bradlaugh troubles he was found to be the safest of guides. It may be that the Corrupt Practices Act of 1883 and the Bankruptcy Act of the same session would never have found their way into the Statute Book if Sir Farrer Herschell had not been one of the occupants of the Ministerial Bench. Like services were rendered in support of the County Franchise Bill of 1884, and yet the Solicitor-General so carefully abstained from seeking prominence in action that the public never learnt how much he had contributed to successes which appeared to be those of his colleagues.

Although a law officer, the Solicitor-General was not a mere lawyer. He was an acute politician then training to be the statesman he became. If the records of the Foreign Office could be disclosed I think it would be found that during the latter years of Mr. Gladstone's Government of 1880 the law officers were consulted by that office more frequently than ever has occurred. Lord Granville was wont—generously enough—to explain why those numerous appeals were made to his law advisers. But he did not know the whole truth. According to an old practice the Foreign Office bag containing the case on which the legal opinion had to be given would first reach the Solicitor-General.[1] Also according to old custom, his draft opinion would be written upon a detached piece of paper. The papers would then be sent to the Attorney-General. Often have I read those Foreign Office papers and felt unable to discover any solution of the difficulties submitted to us. But on turning

[1] I am reminded by a most competent authority that as a matter of fact the *old* practice was to send the papers first of all to the Queen's Advocate and then to the law officers, apparently to the Attorney-General first; *vide supra* 397 in the case of the 'Alabama.'

SIR FARRER HERSCHELL, Q.C., SOLICITOR-GENERAL

From a photograph

to the opinion of the Solicitor-General I was certain to find correct answers to the questions put, and also some most ingenious suggestions for meeting any diplomatic difficulties that might exist. And as I read those opinions so did Lord Granville—only when they reached his eye two signatures were attached to them.

And while Sir Farrer Herschell was developing into a Front Bench man of the first order, he was doing a vast business at the Bar. When the old Northern Circuit was divided in 1876 he had chosen the fertile pastures [1] of Liverpool and Manchester in preference to the newly erected North-Eastern, though he was still seen occasionally at Newcastle and Durham. A couple of years before his appointment as Solicitor-General he had given up circuit except on special retainer, and his success in London was enormous and ever increasing. The law officers then and for many years to come took private practice, and it is no exaggeration to say that Herschell's name is to be found in nearly all the reported cases of the House of Lords and the Privy Council. Few lawyers have ever enjoyed a greater mass of solid and lucrative work. Once only he appears in the garish light of a sensational trial, and his handling of the melancholy Durham divorce case [2] drew from his old master in the law, Sir James Hannen. who tried it, the warmest approbation. His peculiar qualities may best be given in the words of Lord Davey, the rival, beyond all others, with whom he most frequently crossed swords in his later years before the House of Lords and the Privy Council.

His arguments at the Bar reflected his mind; they were distinguished by directness, conciseness, and lucidity. He fastened at once upon the real point in the case, and never was guilty of the fault in advocacy of distracting and wasting the attention of his judges by lingering over the fringe or irrelevant details of the case. He was absolutely clear, and

[1] 'In what pagan pastures has my friend Godson been wallowing?' was the celebrated exordium of a speech by Mr. Henry Matthews (Lord Llandaff) at the Oxford Circuit mess.

[2] Law Reports, x. P.D. 80.

seldom repeated himself; consequently his arguments were never longer than the necessities of the case demanded.[1]

All this meant incessant strain, mental and physical, a strain for which he was bound sooner or later to pay the penalty. He had the faculty of never tiring, or at any rate of never seeming to be weary. He would be in Court soon after ten, having, perhaps, begun consultations at nine. At four he was in the House of Commons, where he remained till the cry of 'Who goes home?' And in those sessions, if the Hibernicism may be pardoned an all-night sitting was all in the day's work. Then came the turn of the 'cases for opinion,' submitted by the Government or by private clients, and many a time the night's rest had to be taken in his arm-chair. Few men can have possessed such a capacity for getting through work, and it was one of the most remarkable features in his mental organisation that he was impervious to distraction.

When reading his briefs at home, says Mr. Williamson, it never disturbed him to have people in the room conversing; indeed it seemed to him rather a relief than otherwise, and he would lay down his papers and join in the conversation if anything caught his ear which interested him.[2]

During these years he had more than one offer of promotion. An ample share of patronage came the way of the Gladstone Government. After refusing the Lordship of Appeal which eventually fell to Lord Fitzgerald, Herschell declined the post of Master of the Rolls on the death of Sir George Jessel in 1883.[3] In the following February an even more attractive bait was dangled before him; Lord Selby tells us that, had Herschell willed it, he might have occupied the Speaker's chair in succession to Mr. Brand,[4] and I have been told that he consulted

[1] *Journal of the Society of Comparative Legislation*, July 1899, 204.

[2] *Ibid.* p. 208.

[3] We have seen (*supra* 449) that in 1879 he declined a puisne judgeship offered him by Lord Cairns.

[4] *Law Quarterly Review*, xv. 126, where Lord Selby also states that

Lord Selborne whether his acceptance of the place of First Commoner would prove an absolute bar to eventual promotion to the Woolsack. The course of events in 1885 may well have caused him searchings of heart and doubts whether he had been wise in holding himself so high. The Redistribution Bill had deprived Durham of one of its members, and the choice of the Liberal party for the remaining seat fell on Mr. Thompson, a local celebrity who had been some eighty votes ahead of the Solicitor-General at the last election. Herschell was compelled to try his fortunes in the North Lonsdale division of Lancashire, where, after a close contest, he was beaten in December by 225 votes. How he would have fared in his old constituency it is impossible to say, for a Conservative in the shape of Mr. Milvain, Q.C., ousted his former colleague from the representation of Durham. He was a remarkably effective platform speaker, and only the other day, after one of our most brilliant Liberal lawyers had been making a speech in a Scotch borough, the highest praise accorded was given by one of the audience, who exclaimed 'There's been nothing like it in Ayr since Lord Herschell was here.'

When Parliament assembled in January 1886, it had become evident that Mr. Gladstone's return to power was a question of weeks, if not of days. And it must have been galling in the extreme for one who had played so prominent a part in politics to be out of action at such a moment. Fortune, however, was working for him. Mr. Gladstone's conversion to Home Rule had changed the whole landscape. On the formation of his third Cabinet the Premier was unable to prevail upon Lord Selborne to be officer of his again, and Sir Henry James was equally obdurate.[1] Herschell's views on the burning question were an unknown quantity, and he was not supposed

in 1894 Herschell might have succeeded Lord Lansdowne as Viceroy of India.

[1] I believe it to be true that on this occasion Sir Henry refused not only the Lord Chancellorship but the office, even more attractive in his eyes, of Home Secretary.

to be peculiarly sympathetic towards Irish aspirations; but on receiving the offer of the Great Seal he consented without hesitation, though leaving himself absolutely unpledged on the burning question of the hour, the details of which still rested on the knees of the Gods. 'That decision is wrong,' he said to his *fidus Achates*, Mr. Gully, as they walked out of the Law Courts together one afternoon in the first week of February, 'but I shall never have the chance of proving it. I have argued my last cause; I have accepted the Chancellorship.'[1] Mr. Victor Williamson, who was dining with him when the fateful note came from Mr. Gladstone, records his good-night words, 'one thing at any rate I am resolved, and this is, I will not become a pompous bloke.'[2]

On February 8 he was created Baron Herschell of the city of Durham. His first Chancellorship was even shorter than Lord Halsbury's. On August 3 he went down to Osborne and handed back the seals. In the interval he had established a great reputation. The first Home Rule Bill never reached the Upper Chamber, and during the months of the 'short Parliament' the legislative duties of their Lordships were all but in abeyance. But the dignity and the fine presence of the Chancellor had time to impress the body over which he was called to preside.

He occupied, in the words of Lord Davey,[3] a position in the House of Lords which few lawyers have attained, and he commanded the confidence and respect of members on both sides of the House. One of the oldest and most experienced

[1] *Law Quarterly*, xv. 126. It was rumoured at the time that Sir William Harcourt, who was descended from a famous Chancellor and had himself been for a short time Solicitor-General under Mr. Gladstone, was pressing his claim for the seals. I happened to be in the company of Sir James Fitzjames Stephen in a circuit town on the morning when the composition of the Cabinet appeared in the newspapers. His Lordship suggested that some 'weird woman' had beguiled Sir William with the vision of the Chancellorship, and then keeping the word of promise to the ear, had vanished with the cry of 'Chancellor—of the Exchequer, aha!'

[2] *Journal of the Society of Comparative Legislation*, July 1899, 209.

[3] *Ibid.* 205.

peers told me that he never knew anybody who so quickly got hold of the House of Lords as Herschell did.

On his return to non-official life his great powers and strict impartiality were freely utilised by the Conservative Government, who chose him to preside over several public inquiries of importance and magnitude—notably the Parliamentary Commissions on the Metropolitan Board of Works moved for by Lord Randolph Churchill, to which more than to any single cause we owe the London County Council, and the Royal Commissions on the Indian currency and on the vaccination laws. What have been justly called his prodigious powers of acquisition and application enabled him to master, in the minimum of time, any subject, however unfamiliar or abstruse. No trait in his character was more remarkable than his complete absorption in the matter in which he was for the moment engaged. One of his former 'devils' coming in to see him at a time of great political stress and crisis was immediately turned on to help in getting the best possible definition of 'a new street' for the purpose of one of his judgments: to all else Lord Herschell was just then perfectly oblivious. And the same gentleman, returning from a somewhat protracted absence out of England, was met, as he was shown into the Chancellor's study, in Grosvenor Gardens, with the abrupt query 'What was that case in which so-and-so was decided?' The visitor might merely have strolled in from the next room in the Temple, as had been his wont half a dozen times a day; and to Herschell's preoccupied mind the familiar name had brought back the old associations.

In private life Herschell was warm-hearted, affectionate, and the most agreeable of companions. Staunch to his friends, he was capable none the less of appraising them at their exact capacity with a power of detachment that is rare in any walk of life; his affection was never allowed to blind him. Open-handed and generous, he was seldom appealed to in vain on behalf of those members of his own profession who had drawn blanks in the

lottery, or who had fallen by the way. He took a leading part in the affairs of the Barristers' Benevolent Society, and I am assured that he was in the habit not infrequently of largely supplementing its grants from his own purse. Though not often quoted as a sayer of good things, he was a perfect mine of circuit stories and of legal anecdote generally, much of which, it is to be feared, has perished with him. A certain remark of his should be carefully treasured by all who administer the laws, in however humble a capacity. When he was at the Bar, Sir George Jessel once attempted to cut him short in an argument. Herschell, who was not a man to be set down, retorted on the Master of the Rolls that, important as it was that people should get justice, it was even more important that they should be made to feel and see that they were getting it.

His many-sided nature was shown in the interest he took in the ill-fated Imperial Institute and in the Royal College of Music. To music he had been devoted from boyhood, and though the claims of his busy life prevented him from becoming a first-class executant, the violoncello was always first among his relaxations, and he was never happier than when he had collected two or three young students from the College to spend a musical evening at his house and play concerted pieces with him. His other main recreation was travel, to which he was passionately addicted. While keenly alive to natural scenery and historical association, the mere change and rapid motion of railway, steamboat, and post-chaise were in themselves both restful and delightful to him. It was in Athens in the autumn of 1886, as they stood together on Mars' Hill, that he told Mr. Victor Williamson the only reminiscence of his schooldays which has been preserved. There had been a battle royal between the head master, who was somewhat given to false quantities, and the more cultivated usher, who finally received his *congé* in the presence of the pupils. With a Parthian shot he proclaimed, as he left the room, that

'he would rather be tried before the Areopāgus and banished to Pergāmus than continue longer in his situation.'[1]

As a judge, Lord Herschell must stand in the very first rank. He was not always easy to practise before: as it is delicately put by Lord Davey, 'his rapidity of mind sometimes led him to anticipate the argument and take it out of the hands of counsel,' a foible which gained on him during his last years, when overwork was beginning to tell. During the argument in Allen *v.* Flood[2] his interruptions were so persistent that Lord Morris was heard to ejaculate 'I understand now what molesting a man in his business means.' Without bestowing the care and elaboration on his judgments that are conspicuous in those of some of his predecessors, he made it his main object to determine the law applicable to the case and leave the remedy, if required, to the legislature. He had no love of refinements, and shared Lord Halsbury's dislike for the importation of equitable doctrines into the construction of commercial instruments. His decisions are marked by acute and subtle reasoning, by a complete command of legal principles, and by a broad treatment of social and constitutional questions.[3] He was essentially a strong judge, who carried weight with the other members of the Court. And it has been remarked that Lord Halsbury's sway over the judicial deliberations of the House of Lords was not made absolute until Herschell's removal from the arena.

He was a strong but cautious law-reformer, and those most successful achievements in the field of codification and consolidation, the Bills of Exchange Act, the Sale of Goods Act, and the Merchant Shipping Act,[4] are largely, if not mainly, due to his initiative and encouragement. He gave liberal assistance to the late Sir Henry Jenkyns in the preparation of the last-named

[1] *Journal of the Society of Comparative Legislation*, 206.
[2] *Supra* 444.
[3] *Dict. Nat. Biog.* supp. ii. 414.
[4] 45 & 46 Vict. c. 61; 56 & 57 Vict. c. 71; 57 & 58 Vict. c. 60.

measure. And in his eulogy on the skill, the ingenuity, and resource exhibited by that great parliamentary draftsman 'in meeting the endless ἀπορίαι that rise in every large and comprehensive bill' Mr. John Morley declares that the only man in his experience at all comparable to Jenkyns in the difficult art of rapidly devising the right words for the bare rudiment and intention of a clause or an amendment was Herschell.[1]

The Bills of Exchange Act was drafted in his own chambers by Sir Mackenzie Chalmers, to whom he suggested a similar enterprise on the law of the Sale of Goods and of Marine Insurance. He entertained strongly the view that a codifying Act ought to reproduce the existing law, and to leave any amendment in it to the conscious act of the legislature; and this doctrine he enforced with conspicuous success when presiding as chairman over the Select Committee to which the Bills of Exchange Act was referred. In this connection it is noticeable that he induced the majority of Lords of Appeal in the Vagliano case to decide that a codifying Act is to be construed in exactly the same way as any other Act of Parliament.[2]

In the interval between his Chancellorships he took no very prominent part in politics. His best remembered appearance in that field was as arbiter at the 'Round Table Conference' of January 1887, from which so much was hoped for the reunion of the Liberal party, and whose only effect was the detachment of Sir George Trevelyan from the Unionist ranks.[3] After the Liberal victory in 1892, Herschell returned to the Woolsack, and during the next three years he afforded the utmost assistance to the Government in the House of Lords. He was one of the Cabinet Committee that prepared the 1893 Home

[1] Introduction to Sir Henry Jenkyns' *British Rule and Jurisdiction beyond the Seas*, xix.

[2] Bank of England *v.* Vagliano Brothers, L.R. (1891), App. Ca. 145.

[3] Sir George, together with Mr. Chamberlain, represented the Liberal Unionists; Sir William Harcourt and Mr. John Morley the Gladstonian Liberals. See Morley's *Life of Gladstone*, ii. 604.

Rule Bill,[1] and his speech on the second reading was by far the ablest defence of the Gladstonian policy delivered in the Upper Chamber.[2] But his three years of office brought some disagreeable incidents in their train—he found himself involved in a heavy correspondence from all parts of the kingdom over the question of appointments to the local benches of magistrates, and his inability to gratify the expectations of the more militant Radicals exposed him to bitter and unworthy attack. 'If ever his work tired him,' says Lord Selby, 'it was then.'[3] No Chancellor was more scrupulous or more discriminating in his appointments. Only two vacancies occurred in the High Court during his terms of office, and those he filled with Sir James Stirling (1886) and Sir William Kennedy (1892), both of whom were subsequently raised to the Court of Appeal.

After the general election of 1895 Herschell became once more a private member of the House of Lords. He continued, however, most assiduously to do his duty to the State both as a legislator and as a judge. Not the least of his public services was in relation to the inquiry into the affairs of the National Society for the Prevention of Cruelty to Children.[4] And it was his fate to die in harness. In 1898 he was nominated by Lord Salisbury a member of the British and United States Joint High Commission to deal with the questions arising out of the Venezuela boundary dispute. The labour was certain to be heavy, the responsibility great, and he was no longer the same tireless machine as of yore; some of his closest

[1] The other members, besides Mr. Gladstone himself, were Mr. John Morley, Lord Spencer, Sir Henry Campbell-Bannerman, and Mr. Bryce (Morley's *Life of Gladstone*, ii. 737 *n*).

[2] Hansard, 4th series xvii. 579. [3] *Law Quarterly Review*, xv. 127.

[4] Instituted in 1897 at the request of Lord Ancaster, the chairman of the Society. The Report informed the charitable public that they might contribute to the Society's funds 'in the full assurance that the money they supply will be judiciously employed in furthering the sacred cause of protecting the children of the community and rendering the condition of their lives brighter and happier.' At Lord Herschell's request Mr. Francis Buxton and Mr. Victor Williamson were associated with him in the inquiry.

friends to whose judgment he had been wont always to attach great weight urged him with all the force at their command not to go, but his high sense of duty to his country forbade him to flinch. He was gratified, moreover, by the intimation conveyed to him that his appointment would be most favourably regarded on the other side of the Atlantic; he had visited Washington and New York some years before, and had won the esteem and affection of the most influential jurists and statesmen in the country.

He reached America early in August of that year, and at once flung himself into his duties. On February 17 he sustained a severe fall from which no untoward consequences were at first anticipated, but which caused his death after an illness of less than three weeks. He passed away suddenly at Washington on March 1, 1899, and the abrupt close, in a foreign land, of a life so brilliant, so dignified, so full of promise, profoundly touched the people of the United States. It is a strange coincidence that the first of the Victorian Chancellors should have been born at Boston in 1772 and that the fourteenth and last should have died at Washington in 1899.

An important sitting of Congress was interrupted in order to adopt a resolution of condolence for transmission to Lady Herschell and to the Queen. President McKinley offered a warship of the United States navy to convey his body to his native shore, but the graceful offer was declined, as the Admiralty had already commissioned H.M.S. 'Talbot' for that office. A solemn memorial service at Washington was attended by the head of the great Republic, by the judges of the Supreme Court, by representatives of the Dominion of Canada, and by an assemblage which contained all that was most distinguished in the society of the national capital.

The coffin was landed at Portsmouth on March 9 and brought to London. On the following day the funeral service, in response to the request of many eminent public

men, was held in Westminster Abbey. It was a most impressive gathering, and the selection of the pall-bearers bore witness to the place in the life of the Empire and the nation which had been filled by him whose mortal remains they accompanied up the nave. Besides his intimate private friends, Mr. Victor Williamson and Mr. Francis Buxton, they were the Lord Chancellor (Lord Halsbury), the American Ambassador (Mr. Choate), Lord Kimberley (as the leader of the Liberal party in the House of Lords), Mr. Balfour (representing the Government), Lord James of Hereford (his colleague as law officer in the Gladstone Administration), Lord Strathcona and Mount Royal (the Agent-General for Canada), Sir Henry Roscoe (representing the London University, of which Lord Herschell was Chancellor), and his old circuit comrade, the Speaker of the House of Commons, Mr. Gully.

The body was finally laid to rest on March 22, in the little churchyard of Tincleton in Dorsetshire, the home of his wife, daughter of Edward Leigh Kindersley of Clyffe in that county. His only son, after serving on the staff of the Lord-Lieutenant of Ireland, is now one of the Parliamentary Lords in Waiting to His Majesty and is bearing his full share of Ministerial responsibility in the Upper Chamber. It is somewhat melancholy to note how few representatives of the Victorian Chancellors have maintained the traditions of their title. Those who know him have good reason for believing that the second Lord Herschell will take rank in the service of his country by the side of the second Lord Selborne and the third Lord Chelmsford.

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